

# Exhibit B

1 FEDERAL TRADE COMMISSION

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6 Public Workshop:

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10 THE INFORMATION MARKETPLACE:

11 MERGING AND EXCHANGING CONSUMER DATA

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15 March 13, 2001

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19 Federal Trade Commission

20 6th and Pennsylvania Avenue, N.W.

21 Washington, D.C.

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For The Record, Inc.  
Waldorf, Maryland  
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# 1 PROCEEDINGS

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3 MR. WINSTON: Let me introduce myself, I'm  
4 Joel Winston, Acting Associate Director for  
5 Financial Practices at the FTC, and I want to  
6 welcome all of you to the Federal Trade Commission,  
7 and give a special greeting to those people who are  
8 listening in on our audiocast on the website,  
9 ftc.gov.

10 Now, there are several members of the  
11 Commission who are going to be giving some opening  
12 remarks this morning, and I would like to introduce  
13 first Chairman Robert Pitofsky. Chairman Pitofsky  
14 has served as chairman of the FTC since April of  
15 1995, and he will be beginning the proceedings.

16 Mr. Chairman?

17 CHAIRMAN PITOFSKY: Good morning, everyone,  
18 and welcome to another of the Federal Trade  
19 Commission's workshops. This one, we have entitled  
20 The Information Marketplace: Merger and Exchange  
21 of Consumer Data.

22 I don't think I have to belabor the point  
23 with this audience that privacy, especially privacy  
24 in the commercial marketplace, is and remains a  
25 very important issue.

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1                   If you take polls, you find today, just as  
2                   you did three and four years ago, that somewhere  
3                   between 88 and 92 percent of consumers when asked  
4                   what their concerns were about doing business,  
5                   buying online, will say that they have  
6                   reservations, and think it's not a secure  
7                   marketplace. They're not giving their credit card  
8                   online without having some knowledge of how it's  
9                   going to be used.

10                  As a result, you now have, I think, just  
11                  since Congress reconvened, something like a dozen  
12                  bills addressing various issues relating to privacy  
13                  in the commercial context.

14                  But let me position this workshop. We are  
15                  not looking for enforcement targets for companies  
16                  that may be invading unfairly or deceptively  
17                  consumer rights, and we're not looking for  
18                  legislative proposals.

19                  This is another kind of workshop, and it's  
20                  like many that we've conducted in the past five or  
21                  six years. We're trying to find out in a new area,  
22                  a fast-changing dynamic area, what's going on, so  
23                  that we are informed about the kind of issues that  
24                  eventually we'll be called upon to address.

25                  We did that with our earliest privacy

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1       workshops, just to find out how personally  
2       identifiable information was collected and whether  
3       or not it was being sold. We did it with  
4       profiling, more recently B2B commerce on the  
5       Internet, and wireless technologies.

6               In this instance, we would like to be able  
7       to take the measure of the extent and the ways in  
8       which firms exchange information and data that  
9       create consumer profiles; not necessarily only the  
10      information the firm collects itself, but  
11      information that someone else collects that then  
12      becomes merged into a firm's database.

13               How is that information used commercially?  
14       Is it used commercially? And if so, in what  
15      fashion? What is the source of the data? Is it  
16      mostly online, is it offline, is it a combination  
17      of the two? Does it come from public records,  
18      private records, a combination of the two?

19               We know that the ability of firms to  
20      collect data has been enhanced dramatically over  
21      the last five to ten years, and what we want to  
22      find out is how it's being used so that down the  
23      road we can spot issues. It is an  
24      information-gathering enterprise. It is not  
25      designed at the end of the day, at the end of these

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1 sessions, to come up with policy proposals.

2 We have no predisposition on this. My own  
3 view, as some of you have heard me say before, is  
4 that this kind of enterprise is what Congress had  
5 in mind in 1914 when it created a Federal Trade  
6 Commission. Not just law enforcement, but a group  
7 that would try to work with the business community,  
8 with consumers, and others, to understand new and  
9 emerging dynamic trends in the economy.

10 That is what we've been about over the last  
11 five or six years. We've tried to restore that  
12 tradition, and I certainly feel that this workshop  
13 moves in that direction.

14 We have a wide variety of people here today  
15 who represent the business community, the consumer  
16 community, academics, and others, and if history is  
17 any guide, we will at the end of the day have  
18 learned a good deal from each other.

19 With that, we'll receive some words on  
20 video from my colleague, Mozelle Thompson, but  
21 while that's being set up, let me introduce my  
22 colleague and friend, Commissioner Orson Swindle.

23 COMMISSIONER SWINDLE: Thank you very much,  
24 Chairman Pitofsky. I would like to welcome you all  
25 here, and before I forget it, the last couple of

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1 days in preparation for this, Bruce Jennings and  
2 his crew of youngsters around here have been  
3 scurrying in about 9,000 different directions  
4 making all this come together. Wires have been  
5 dragged all over the building and I think we've got  
6 a good set-up here, and this will be recorded for  
7 posterity and hopefully there won't be too much  
8 blood on the floor when it's all over, but it's a  
9 delight to see you all.

10 I know so many of the organizations that  
11 are represented here, you have a vital interest in  
12 this, certainly from a personal perspective of your  
13 business, but we are all, as the chairman says,  
14 grasping to understand. And I would hope that we  
15 would view this process here today, as we have in  
16 previous workshops, as the Chairman mentioned, as a  
17 learning process in which we listen and offer our  
18 suggestions from time to time, but mostly we listen  
19 to you, the practitioners, and try to get a better  
20 understanding of what we're all about and what  
21 we're doing here with this very controversial -- is  
22 that a good word to describe it -- but the issue of  
23 information flow and its effects and the concerns  
24 that various and sundry people have today in the  
25 consumer population or in business population.

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1                   I do want to welcome you all here today.  
2                   The use of third party information from public  
3                   records, information aggregators and even  
4                   competitors for marketing has become a major  
5                   facilitator of our retail economy.

6                   Even Chairman Greenspan suggested here some  
7                   time ago that it's something on the order of the  
8                   life blood, the free flow of information. This was  
9                   made even more clearly by a new study released  
10                   yesterday by the Privacy Leadership Initiative and  
11                   the ISEC Council of the DMA.

12                   The study made it clear that consumer  
13                   prices would increase if public policy  
14                   significantly limited the flow of data into catalog  
15                   marketing and sales. At the same time, the digital  
16                   revolution, both online and offline, has given an  
17                   enormous capacity to the acts of collecting and  
18                   transmitting and flowing of information, unlike  
19                   anything we've ever seen in our lifetimes.

20                   Obviously the debate has been furious over  
21                   the appropriateness of these data flows, this  
22                   passage of information from one entity to another.

23                   The perceived harm that this data flow  
24                   causes and what the appropriate remedies might be.  
25                   As we all know, we've had a heavy debate on privacy

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1       going on now for at least three years, I've been  
2       here three years, and it was going on even before I  
3       arrived.

4               I believe that issues related to the real  
5       harm that might be caused are well addressed by  
6       existing laws, but now we need to explore issues  
7       related to customer or consumer and business  
8       entities or the seller and the buyer, if you will.

9               It is also useful to note that the digital  
10      revolution has revolutionized the knowledge that  
11      the buyer has about the marketplace. Buyers today  
12      are more informed than they have ever been ever  
13      before. The information age and information  
14      technology is literally changing the way every one  
15      of us does business, the way we conduct our lives,  
16      how we pick and choose, and certainly this  
17      information flow has made the buyer far more  
18      informed.

19               It is crystal clear that there have been  
20      quantitative and qualitative changes in the  
21      marketplace, and the manner in which information is  
22      made available and used.

23               There are real benefits in this for both  
24      consumers and businesses, from these changes.  
25      There are also changes in the way we all interact

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1       with each other. More of the interaction is being  
2       defined by data and less by each of us based on  
3       what we reveal about ourselves.

4               The FTC has traditionally dealt with harm  
5       that comes from bad actors and market failures.  
6       The issues being raised today don't necessarily  
7       fall easily into either of those categories. Such  
8       as the challenge that we face.

9               Productivity gains are well documented and  
10      the new technology, as I said earlier, is changing  
11      the way we do everything. However, there is a  
12      great trust deficit in existence out there now.  
13      The public has concerns about the private sector's  
14      ability to govern information use, or manage that  
15      information that they happen to have on people. At  
16      the same time, the same observations will tell you  
17      that the public has great concern as to what the  
18      government does with the information it has.

19               And I would contend that we might ought to  
20      be a little bit more concerned about what the  
21      government is doing than the private sector, but  
22      nevertheless, we've got a great distrust going here  
23      between the consumers who more and more today  
24      understand the value of their information, and what  
25      goes on around them.

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1                   We therefore have a dilemma. The use of  
2 information drives our economy, I think that's  
3 pretty well established. That includes information  
4 to make sales, marketing and customer service more  
5 efficient, and more effective. The information  
6 flow allows businesses to build the right product,  
7 deliver it at the right time, to the right place,  
8 to the right address, and meet the demands, unique  
9 as they are, among all consumers, carefully  
10 tailored to them. That I would suggest most  
11 consumers would say not a bad deal.

12                   However, this increased use of information  
13 about people creates consumer concerns. The public  
14 is concerned about the potential misuse of the  
15 information, and individuals are concerned about  
16 being defined by the existing data on themselves.

17                   This is a huge misunderstanding deficit  
18 that parallels and matches the trust deficit.  
19 Consumer education has lagged market changes driven  
20 by new technology. Government is behind the new  
21 technology changes, too, as we've all noted.

22                   Consumers struggle to understand the  
23 technology itself, not just in the ways in which a  
24 technology is used in the marketplace, I'm still  
25 wrestling with my ISP, I was about to use a name

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1       there, but I won't. I'm having so much trouble  
2       with it, I don't want to defame the country at this  
3       point in time, but I'm having trouble with the  
4       technology itself, not to mention the information  
5       flow.

6                   Today's workshop is a great opportunity to  
7       begin to bridge this learning gap and this trust  
8       and misunderstanding or untrust and understanding  
9       deficit. We're here today to gather facts and  
10      begin to understand the flows of data that support  
11      marketing and customer service.

12                  This should increase our understanding of  
13      the benefits of the free flow of information, and  
14      to begin to understand the level of real harm, to  
15      whatever degree it might exist, related to  
16      information use.

17                  And perhaps we have an opportunity to ease  
18      the fears that are related to that emotion of fear  
19      of the unknown. I would suggest, plead with,  
20      counsel all participants to please leave your  
21      emotions at the doorway.

22                  This session today, folks, please, is not  
23      about sound bites, it's not about exposing people  
24      in public, it is about learning and sharing what we  
25      each know and how we go about doing what we are

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1       concerned with, and understanding how to balance  
2       legitimate privacy concerns and economic and social  
3       benefits.

4               Remember, today's objective is to learn, to  
5       explore, and perhaps start to identify so we can  
6       put our hands on it, some policy approaches that  
7       are balanced in their -- they're balanced in a  
8       sense that they balance the consumer's interest in  
9       choice and economic opportunity, they balance the  
10      consumer's interest in not being harmed by security  
11      breaches and data misuse, they're balanced in the  
12      sense that they respect the consumer's interest in  
13      choosing when to not participate in a market, and  
14      also the other side of the coin, so to speak, is  
15      business interest in serving all markets in a most  
16      effective and efficient and, quite frankly,  
17      profitable way that they can. That's what you are  
18      our free enterprise system is all about.

19               I thank you again for joining us. This is  
20      an important session. Perhaps it's the first of  
21      several important sessions on the very subject,  
22      because I think we have a lot to learn and we  
23      appreciate you coming here and being a part of our  
24      family and helping us learn more, learn faster, and  
25      hopefully, as I always say, helping us to look

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1 before we leap. Thank you very much.

2 (Applause.)

3 COMMISSIONER THOMPSON: Good morning. I  
4 would like to join the Chairman in welcoming you to  
5 the FTC for this important workshop on the  
6 Information Market Place.

7 As he mentioned, today we will all be  
8 sharing what we know about the topic of Merging and  
9 Exchanging Consumer Data. It's no secret, for  
10 example, that the Federal Trade Commission has been  
11 long talking about issues dealing with personal  
12 data and privacy.

13 I think that today we will be talking about  
14 how the issues raised with data collection converge  
15 when we're talking about an online and offline  
16 environment.

17 At present, there are some real reasons to  
18 distinguish those two classes of information, in  
19 light of the speed and the manner in which  
20 information is collected. But I also recognize  
21 that, as a practical matter, it doesn't make sense  
22 for consumers and businesses to view separate  
23 protocols for online and offline data collection.

24 So, I would encourage industry and  
25 consumers to work together to formulate practical

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1       solutions that foster consumer confidence.

2               But there will also be some important other  
3       questions that you'll be dealing with today about  
4       issues like legacy data, information that was  
5       collected before there was an online environment,  
6       and, also, how information changes -- does the  
7       character really change when you have offline data,  
8       including public information that's merged with  
9       online data and made available in a mode like on  
10      the internet.

11               I look forward to hearing your  
12      presentations and hope that you'll enjoy the day.

13               Thank you very much for coming.

14               MR. WINSTON: Before we get started, I have  
15      a few ground rules and announcements to make. The  
16      first one I approach a little bit gingerly, but I  
17      have been asked to ask all of you to turn off your  
18      cell phones. I'm just the bearer of bad tidings  
19      here. Apparently there's some feedback between the  
20      cell phones and our equipment, and it's messing  
21      everything up, so if you could please turn off your  
22      cell phones.

23               Also, I would like to remind our panelists  
24      that because we have so much ground to cover today,  
25      we're going to try to hold you to the time limits

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1       that we've discussed with you previously. We're  
2       going to give you a one-minute warning before your  
3       time elapses, and then when your time is up, we're  
4       going to gently encourage you to conclude your  
5       remarks. If that doesn't work, we have someone  
6       with a hook who's going to come out and kind of  
7       pull you away, but if you could try to stay within  
8       the time limits.

9               Also, it's our practice in our workshops to  
10      invite the audience to ask questions of the  
11      panelists, if time permits, at the end of each  
12      panel. But, again, because we have so much ground  
13      to cover, I'm going to ask the questioners to limit  
14      themselves to asking questions and not to make any  
15      statements for the record.

16               Which brings me to my last announcement,  
17      and that is that the record of this workshop is  
18      going to remain open for 30 days, until April 13th,  
19      so that anyone who wants to file something, a  
20      comment or other materials, for the record, and for  
21      the Commission's consideration, can do so. The  
22      instructions for filing these post workshop  
23      comments are available on our website at  
24      www.ftc.org. So, I encourage you all of you to  
25      participate in that process. Dotgov, I'm sorry,

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1       somebody gave me the wrong web address here, okay.  
2       Anyway, I encourage you all to submit comments if  
3       you like.

4               Now we're ready for our first panel, in  
5       which Professor Mary Culnan of Bentley College will  
6       lead a discussion designed to provide an overview  
7       of the flow of data through the information  
8       marketplace. Professor Culnan is the Slade  
9       Professor of Management and Information Technology  
10      at Bentley College in Waltham, Massachusetts, where  
11      she teaches and conducts research on information  
12      privacy. She is the author of the 1999 Georgetown  
13      Internet Privacy Policy Survey, and was a member of  
14      the FTC's Advisory Committee on Access and  
15      Security. And Professor Culnan will introduce the  
16      members of her panel.

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# 1 SESSION ONE:

## 2 MERGER & EXCHANGE OF CONSUMER DATA:

3 AN OVERVIEW

4 — — — — — — —

5 MS. CULNAN: Thank you, Joel, and thank  
6 you to the FTC for inviting me to participate in  
7 this workshop. It's going to be a terrific day.

8 One comment about our session. We were  
9 instructed we're not going to have Q&A at the end  
10 of our session, because we're just providing an  
11 overview, so I didn't want you to think that we're  
12 cutting off the flow of discussion arbitrarily.

13                   What we are going to do today is we're  
14                   going to talk you through a slide, which I'm going  
15                   to put up here, and which you also have in your  
16                   packet. Because the other two people are going to  
17                   be having their own slides.

18                   We're going to talk you through this 30,000  
19                   foot view of profiling to set up the rest of the  
20                   day's sessions. And so, if we skim over a topic  
21                   that you think we should have gone into in more  
22                   detail, you will hear about this in more detail in  
23                   the other sessions later on today.

24                           We're going to focus primarily on the  
25                           compilers, the third party organizations that

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1       collect, slice and dice and then resell consumer  
2       data (but these firms do not have a direct  
3       relationship with consumers), rather than focusing  
4       on the profiling that's done by individual firms  
5       with their own customer data.

6               And for the purpose of simplicity, we're  
7       also not going to talk about co-op databases, which  
8       fall into the category of third party organizations  
9       that collect information on customers, because  
10      there's such a small number of these systems, but  
11      for some of the things that we're going to talk  
12      about, they also fall into our slide.

13               So, let me first introduce our two  
14       panelists. First is Johnny Anderson, who is the  
15       president and CEO of Hot Data, Incorporated. He  
16       has over 30 years of technology industry  
17       experience, holding executive and management  
18       positions at e2 Software Corporation, Saber  
19       Software Corporation, Novell, Excelan and Digital  
20       Equipment.

21               Our second speaker is Lynn Wunderman, who  
22       is the President and CEO of I-Behavior,  
23       Incorporated. Prior to founding I-Behavior, she  
24       was the founding partner of Wunderman, Sadh &  
25       Associates, which is a consulting firm specializing

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1       in information-based marketing services for both  
2       consumers and B2B marketers in the financial  
3       services, high-tech graphic arts, non-profit and  
4       Internet industries, and President and Chief  
5       Operating Officer of Marketing Information  
6       Technologies, a company providing database services  
7       for major Internet and Fortune 100 companies. She  
8       currently serves on the Internet committee of the  
9       board of directors of the Direct Marketing  
10      Association.

11           So, what we've done, we've divided the  
12       slides into thirds. I'm going to discuss the first  
13       part which is on the left, this is the consumer  
14       part where consumers generate information in our  
15       daily lives that ends up in a compiler's database.  
16       Johnny Anderson is going to discuss the middle part  
17       of what goes on in the compiler's black box, and  
18       Lynn is going to discuss the third part on the  
19       right, how compiled data is used to generate offers  
20       to consumers, both prospects and consumers.

21           And then as you can see, our picture begins  
22       and ends with the consumer, which is an important  
23       point I think.

24           After I attended my first DMA convention  
25       and went through the exhibits, I came away

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1       convinced that anything anybody does puts you on  
2       somebody's mailing list or you end up as a record  
3       in somebody's database. And the slide shows some  
4       of the main ways that this can happen.

5               First of all, all of us generate a number  
6       of public records, depending on the kinds of  
7       activities we engage in. Some of these include  
8       personally identifiable information such as  
9       property records, which do have our name and  
10      address attached to them, or telephone directories  
11      or other directories, and then there's public  
12      records that have nonpersonally identifiable  
13      information in them such as census records.

14               And compilers can acquire this information  
15      in two ways. First they can acquire it directly  
16      from the source, so they could buy the records from  
17      the state or local government. Or they may acquire  
18      the information from a second firm, such as  
19      Claritas, that acquires this information and does  
20      some analytics on it and then generates geographic  
21      and demographic profiles that do not include  
22      personally identifiable information but can be  
23      overlaid on top of a record that does have an  
24      address.

25               And in fact there was an example of this

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1 information in yesterday's Washington Post, if you  
2 happened to see this, of talking about Fairfax  
3 County, Virginia that has the highest average  
4 family income in the United States. And inside the  
5 article, they talked about the different lifestyle  
6 segmentation profiles that are represented by the  
7 people who live in Fairfax County.

8 For example, they said 22 percent of the  
9 people who live in Fairfax County are in The  
10 Winner's Circle, that's the name of the profile, or  
11 Executive Suburban Families, age 35 to 64,  
12 household income is \$90,700 a year, and these  
13 people are most likely to have a passport, shop at  
14 Ann Taylor and read Epicurean Magazine.

15 So, this will give you a flavor of how this  
16 information is used to, again, help companies  
17 understand who their customers or their prospective  
18 customers are.

19 A second source of information is surveys,  
20 such as warranty cards or marketing surveys that  
21 could include questions about what people's product  
22 preferences are across a whole range of different  
23 kinds of products, their life styles, their  
24 hobbies, and their demographics.

25 The third way that the information can end

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1 up in a compiler's database is that people sign up  
2 for mailing lists, and I was thinking about this as  
3 I read the Sunday paper and, you know, there are  
4 cards that fall out of the Sunday magazine where  
5 you can request information on various topics.

6                   Or people who order things by mail, or you  
7 request information, call an 800 number, sign up  
8 for something online, enter a sweepstakes or a  
9 contest, and these types of things will put you on  
10 a mailing list.

11                  Well, mailing lists may be made available  
12 directly, without going through a compiler, either  
13 by the firm itself or more likely through a list  
14 broker who is going to manage the mailing list on  
15 behalf of the firm that owns the list. And that  
16 can end up with targeted offers to prospective  
17 customers.

18                  Or some of the information may end up in  
19 the compiler's database, and go into subsequent  
20 uses that we'll hear about.

21                  And then, finally, down at the bottom, we  
22 see the customer database, and when consumers  
23 establish a customer relationship with an  
24 organization, with a business, they end up in the  
25 customer database. And I think this is not a big

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1 surprise to everybody.

2 And then that firm can generate new  
3 targeted offers to its current customers. I think  
4 people expect this to happen, but we're also going  
5 to hear how compilers can help these firms generate  
6 new offers to their customers, better target these  
7 offers and help these firms do cross marketing of  
8 new products and services.

9 So now Johnny will talk about what goes on  
10 in the middle of the picture.

11 MR. ANDERSON: Good morning. My name is  
12 Johnny Anderson, I'm Chief Executive at Hot Data.  
13 How Data is an infomediary that connects customer  
14 relationship management marketing automation  
15 systems to sources of both household information on  
16 consumers, and business information about  
17 businesses, and provides a complete set of data  
18 quality and standardization services for both  
19 small, medium and large-sized businesses.

20 I'm going to spend a little time and talk  
21 about the kinds of information that's collected,  
22 how it gets compiled into a database, and then gets  
23 delivered into a marketer's, end user's, database.

24 But first I want to kind of digress. I've  
25 looked at some of the other slide shows, and a lot

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1 of the topics are going to be hit. I really want  
2 to digress and talk about why people are -- why  
3 marketers are interested in this kind of  
4 information to begin with.

5 Building a data warehouse and collecting  
6 this kind of information is a massive undertaking,  
7 and very expensive. What's the payback, and what  
8 are businesses looking for out of taking third  
9 party information and merging that in with their  
10 in-house information?

11 If you think about commerce, if you think  
12 back, all the way back to the middle ages when  
13 commerce really first started. The buyers and  
14 sellers knew each other. There was a one-to-one  
15 relationship. Even up into the beginning of the  
16 last century, people knew -- the storekeepers knew  
17 who their customers were.

18 After World War II and the mobilization of  
19 America, and the move from urban centers into  
20 suburban centers, and the creation of the now  
21 shopping mall, merchants now lost track of who  
22 their customers are. They don't know who buys  
23 products anymore.

24 So, merchants really spend a lot of time  
25 doing product level analysis to figure out who

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1       bought the stinky cheese, and what stinky cheese  
2       purchases drove what other kind of purchases.

3                 The change in the new economy, and the  
4        evolution of the Internet now has really empowered  
5        consumers with information, and has broken down a  
6        lot of the geographic boundaries in terms of, I  
7        have to travel to a mall to purchase something.

8                 This has already been broken down quite a  
9        bit with the direct marketing and catalog  
10       industries, but now with the Internet, people now  
11       have a lot of information.

12                So, it is now dependent on -- a business'  
13        dependence on success is now leveraged by what kind  
14        of service they can deliver. And to deliver that  
15        service, they again have to know who their  
16        customers are.

17                So, you really look at all of the kinds of  
18        information that's available so that businesses can  
19        get a complete 360-degree view of their customers  
20        to be able to understand them not only in the  
21        context of their own transaction that may have  
22        taken place, but also what the likes and dislikes  
23        of that customer are.

24                So, when you really look at the kind of  
25        information that's available, it really falls down

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1       into three categories. There's the geographic  
2       information, or where you live, and that kind of  
3       information is really address data, quality of the  
4       address, standardized to the Post Office's  
5       standards, what's the bar code for the address, but  
6       also includes information like what MSA that  
7       address is in, what census tract that address is  
8       in, and important things like latitude, longitude  
9       and geocoding, which are really used by businesses  
10      to do things like drive time analysis, and trade  
11      area analysis.

12            But one of the first segmentations, at  
13       least in the retail industries, and now in the  
14       telecom industries, is where do you -- where do  
15       people live and how far are they likely to travel  
16       to get to one of my retail locations.

17            The second is really the demographic  
18       information, and the collection and the detail of  
19       this will really be talked about a lot in panel  
20       number 2, but that's things like name, address and  
21       phone number, at a very basic level, but also  
22       reported and modeled information around a person's  
23       income level, what their marital status is, whether  
24       they buy by mail, whether they're a credit card  
25       user, whether they own their own home or not,

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1 information about what you're like.

2 And then the third piece is really the  
3 psychographic information, and that's really what  
4 you like, what your life style indicators are, and  
5 that's where a lot of the compiled information  
6 comes in from, lists and surveys, to determine what  
7 somebody's propensity to buy a specific kind of  
8 product is. And those are indicators that could be  
9 that you're an outdoors enthusiast, a gardening  
10 book reader, dot, dot, dot, there are a number of  
11 different life style indicators.

12 So, how is that information merged into one  
13 particular database? Data compilers really look to  
14 those three sources and do a very complex job of  
15 extraction, transformation and loading of that  
16 data. And that data is bought from public sources,  
17 and that could be things like tax records, home  
18 owner information, up until recently motor vehicle  
19 information was used, and in some states, even  
20 driver's license information.

21 But that information is reported  
22 information that's public record that's brought  
23 into the database. Self reported data really  
24 drives a lot of the demographic and psychographics,  
25 and that's information from surveys and warranty

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1 cards and registrations.

2 And then information from mail lists, and  
3 that is I'm -- I have a wooden boat, I subscribe to  
4 Wooden Boat Magazine. If I subscribe to Wooden  
5 Boat Magazine, there is a great likelihood that I  
6 am likely to buy products for wooden boats.

7 So, affinity modeling and propensity  
8 scoring is really driven by the self-reported data  
9 from both subscriptions and product registrations.

10 That information is matched based on name  
11 and address, so that there's really a view of a  
12 consumer that takes into account all of those  
13 different kinds of data sources. And then there's  
14 some additional modeling that's done on top of  
15 that, based on scientific samples and surveys,  
16 different kinds of models are put into place for  
17 specific vertical industries.

18 Not every industry is interested in the  
19 same kind of consumer information. A telecom  
20 merchant is not interested in the same kind of  
21 information that a retailer is interested in.

22 So, modeling is done based on a set of  
23 attributes that's been collected to be able to put  
24 together things for financial services and other  
25 industries. And then the output of that

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1 information really goes to two sources.

2 One is the data enhancement source, in that  
3 I have a customer database of people that have come  
4 to my company from a number of different sources,  
5 could be a customer that signed up for a frequent  
6 buyer program at a retail location, could be a  
7 customer that's come to me at a trade show or sent  
8 back a business reply card, or a customer that's  
9 walked into one of my retail locations.

10 The customer that's in my database, so I'm  
11 really looking for information that's outside my  
12 organization so I can understand that customer  
13 better.

14 And the second is the targeted lists, and  
15 that is really if I've done some analysis in terms  
16 of what my best customer looks like, give me some  
17 more prospects that I can market that look just  
18 like those folks. I don't know who they are yet,  
19 and in most cases those targeted lists are going to  
20 go to a mail house who is going to get a mail drop,  
21 and I won't know who they are, until they respond  
22 to that direct mail campaign and come back into my  
23 database.

24 And then they'll go into the normal process  
25 of my selling process inside my customer database.

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1                   So, there will be a lot of detailed talk  
2                   about both the collection of data in the second  
3                   panel, and then the use and kind of how the  
4                   technology drives some of the business models for  
5                   the use of that data in the third panel a little  
6                   bit later on.

7                   So, with that, let me turn it over to Lynn,  
8                   and let her talk about some of the internal uses of  
9                   data.

10                  MS. CULNAN: Thank you, Johnny.

11                  MS. WUNDERMAN: Bear with me just one  
12                  second here. Thank you.

13                  Well, I've been asked to spend the next 15  
14                  minutes talking to you about the end user  
15                  applications that have evolved really over the last  
16                  two to three decades, so it might be a little  
17                  tight, but we're going to do the best we can.

18                  I'm going to start where Johnny left off,  
19                  which is to help you understand how this kind of  
20                  compiled data really brings a name and address  
21                  record to life for a marketer.

22                  Now, this is a real, live consumer record  
23                  off of a compiled database. I can attest to it  
24                  because it's me, it's the Wunderman household at 94  
25                  Mercer Avenue in Hartsdale, New York. I have

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1 signed a release so that my data can be made public  
2 here today. But just from that information, we can  
3 now geocode this record and find out its census  
4 block group, attach all the geographic information  
5 available for the census, as well as we can now  
6 construct a match code, which you see here on the  
7 right side of the screen. That match code is the  
8 link to the compiled database by which we overlay  
9 the demographic and the psychographic information  
10 that Johnny was just earlier describing to you.

11 Now, what happens when we do that? This is  
12 pretty much what you get, on the Wunderman  
13 household, a fairly distinct profile of a  
14 relatively affluent middle-aged, suburban couple,  
15 dotes on their dog, is extremely mail responsive,  
16 somewhat techno savvy and lives pretty much a  
17 high-end, fairly active life style.

18 Now, I can tell you this is a pretty  
19 accurate record. There are two things they missed  
20 here. They missed the registration on my husband's  
21 antique motorcycle, okay. They are off by one  
22 category on our income; that's okay with me if it's  
23 okay with the IRS.

24 But why do we want this data? Why do we  
25 want this information? As Johnny said before, it's

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1 not because we're being nosy, it's because we're  
2 looking to establish and build a relationship with  
3 a consumer.

4 Now, Webster defines a relationship as a  
5 connection, a bonding or a contract, and the way we  
6 build relationships for marketing purposes is  
7 really no different than the way we establish and  
8 nurture relationships in real life. I mean, we do  
9 it through data, whether it's by factual  
10 information or observation, we're looking to  
11 establish some common ground by which we can create  
12 a meaningful, relevant communication to gain that  
13 connection.

14 Now, I will tell you that the way it's done  
15 by general advertisers is different from the way we  
16 do it as direct marketers. In fact, it's the exact  
17 opposite.

18 As a general advertiser, I'm looking for  
19 large numbers of people with something in common.  
20 Maybe I'm targeting women, 25 to 49, maybe some  
21 broad-based income qualifier. I'm going to talk to  
22 them based on what it is these women have in  
23 common. Or at least I think they have in common.

24 Now, the issue is just because these are  
25 women largely of child-bearing age doesn't

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1 necessarily mean they have kids, but when I'm  
2 spending \$7 to \$10 a thousand to reach them on TV  
3 or maybe \$20 to \$30 a thousand to reach them in  
4 print, I can afford to have a certain amount of  
5 misses there.

6 But it's very different when you're a  
7 direct marketer. I may be spending \$500 or \$1,000  
8 a thousand to reach somebody at an individual or at  
9 a household level.

10 So, I'm going to be much more stringent and  
11 rigorous when I look at and evaluate the success of  
12 that communication. I'm not looking for soft  
13 measures like awareness or reach and frequency, I'm  
14 looking for that household to take a specific  
15 action, and I'm going to evaluate the cost  
16 efficiency of that action based on return on  
17 investment.

18 So, I've got to be much more precise in my  
19 ability to target that household and develop a  
20 meaningful, relevant communication so I can capture  
21 their attention and do it quickly.

22 So, we've learned over the years as direct  
23 marketers a very important principle over the  
24 years, and that is that people's differences are  
25 more important than their similarities.

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1                   Now, what do I mean by that concept? I  
2 mean that what it is when you're studying a group  
3 that sets them apart from everybody else is more  
4 important than what it is that the people in that  
5 group have in common with each other.

6                   So, the differences are more important than  
7 their similarities, and they respond better when  
8 those differences are recognized.

9                   Now, here's what I mean by differences.  
10                  It's all the data we've been talking about. It  
11 might be geographic, could be climate, market size,  
12 it might be demographic, life stage or life stage  
13 change, you know, maybe I just got a new spouse,  
14 got a new house, got a new baby, preferably in that  
15 order.

16                  It could be psychographic information,  
17 hobbies and interests we've been talking about, or  
18 it could be your purchase history. Now, we haven't  
19 talked a lot about that, but that purchase history  
20 could be self reported that I got off of some kind  
21 of a survey, or it could be the purchase history  
22 that a marketer captures and utilizes in their own  
23 database.

24                  And normally when we talk about this, we  
25 talk about the recency, the frequency, the monetary

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1       value segments as a marketer. And I will tell you  
2       this is incredibly powerful information from a  
3       segmentation standpoint.

4               So, I might talk to you differently if  
5       you're a new customer versus a tenured customer.  
6       I'll not only talk to you differently, but I'll  
7       invest differentially if you're a high-value versus  
8       a low-value customer, and I'll have an entirely  
9       different contact strategy, frequency of the kind  
10      of offers I'm going to send you, if I happen to  
11      know that you're a loyal customer as opposed to a  
12      competitive switcher.

13               Now, as I said, this behavioral information  
14      is incredibly important to marketers, and it works  
15      terrifically, if you have it. But you don't always  
16      have it. I mean, it's great if I'm talking to a  
17      group of customers that have been with me a long  
18      time and I have a lot of data on those people, it's  
19      an established product, it's a proven offer, but  
20      what do I do in a situation when I'm trying to  
21      attract new prospects into the base? I don't have  
22      a lot of data about their purchase behavior,  
23      particularly about what they're buying from my  
24      competitors.

25               What about if I'm trying to spend on my new

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1       customers based on their potential to become  
2       high-value customers every time. Not much there in  
3       my database about these people. Or if I've got  
4       some test market results that I've done with new  
5       offers, new products, I know in aggregate how  
6       people are likely to respond, but I've got to think  
7       about who do I target with those offers because I  
8       don't have that response information on everybody  
9       in my database.

10           So, what do we do? We use surrogate data.  
11          We use surrogate data as a bridge to help us be  
12          able to apply that behavioral information to  
13          another universe.

14           Now, the most important data that we tend  
15          to use as surrogates is this compiled information  
16          we're talking about today, because there's a very  
17          important criterion that data has to be as  
18          available on the target audience that I'm studying  
19          as the application universe that I'm applying it  
20          to. And the compiled data is virtually available  
21          on just about every household in the U.S.

22           So, what I am going to do is I am going to  
23          use my behavioral data in my own customer database  
24          to define a target. I'm then going to use the  
25          bridge data, the compiled data to describe the

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1       target and create a profile, and then I'm going to  
2       use that profile to help me find lookalikes in some  
3       larger application base.

4               So, let me show you schematically how this  
5       works. I'm a marketer and I have defined a target  
6       as my high-value customers, however I define it,  
7       profits, revenues, purchase frequency, et cetera.

8       And my goal is that I'm looking to identify  
9       prospects in the population who have a high  
10      potential to become high-value customers every  
11      time, I want to track them into my base.

12              So what do I do? I'm going to study how do  
13       these high-value buyers look different from  
14       everybody else in the U.S.? And the data I'm going  
15       to use to do that is all the demographic  
16       information, the psychographic information, and I  
17       will tell you the coverage on the psychographics  
18       does not tend to be as large as some of the other  
19       data, so it doesn't often enter these statistical  
20       analyses, but we use it and we see if it's  
21       predictive. The geographic data and the census  
22       information, all to help me understand what is it  
23       about this group that makes it look different from  
24       everybody else.

25              I'm going to overlay statistical tools so

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1       that I can really quantify which of these  
2       differences are statistically significant in  
3       identifying this target. I'm going to look at the  
4       interaction and the relative weight or strength of  
5       those variables, and I'm going to apply it back to  
6       a broader universe, in this case, the U.S.  
7       population.

8               Every household gets this -- every  
9       household gets a score, excuse me, and the highest  
10       scores are the most likely to generate and to  
11       exhibit that target behavior. Those at the bottom  
12       are least likely to become your high-value  
13       customer, and this is nothing more than a planning  
14       tool. Okay, I'm going to penetrate that universe  
15       of U.S. population based on my volume objectives,  
16       my budget limitations, whatever.

17               Now, I think it's important for you to  
18       understand as we talk about these concepts, where  
19       the predictive value of that data comes from.  
20       Okay, and I promise, no formulas, you don't need to  
21       be -- have a degree in applied statistics, it's a  
22       very simplistic example.

23               I'm just going to use marital status and  
24       I'm only going to give it two values. So, here I  
25       am studying my high value-customers, all right, and

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1       I'm looking at them and I see well, big deal,  
2       they're just as likely to be married as they are to  
3       be single, that doesn't tell me much of anything,  
4       does it? How do I target anything based on this  
5       information, how do I talk to them based on this  
6       data?

7               Well, guess what? I compared them to the  
8       U.S. population, and they're twice as likely to be  
9       single as the rest of the population at large.  
10       Now, take this predictive value, multiply it times  
11       another half dozen to a dozen variables, you start  
12       to see where the power of these statistical tools  
13       comes from.

14               So, how do we use these tools? Well, we  
15       use them to help drive differential contact  
16       strategies. Who do we target, when do we target  
17       them, how do we target them so that we're more  
18       efficiently reaching them with more relevant  
19       communications across the entire life cycle of the  
20       customer. From acquisition to value stimulation,  
21       all the way to eventual retention and  
22       re-activation.

23               So, for instance, I'm going to rank my  
24       customer database based on this information, and  
25       I'm going to spend differentially based on the

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1 probability of these people being high-value  
2 customers, the repeat sales, cost sale, up sale,  
3 I'm also going to apply it as well to my customer  
4 information applications. Maybe I'm even going to  
5 develop new services for high priority customers.

6 I can overlay this data on any vertical or  
7 apply it out from a compiled database, I can use  
8 this for direct sale or regeneration offers. Also  
9 remember, that because this tool is developed at an  
10 individual household level, I can aggregate it back  
11 up to any level of geography.

12 So, for local support programs where  
13 there's a retail trading area or there's a sales  
14 territory, it become a very useful tool to  
15 prioritize differential media and households for  
16 these purposes.

17 It's easy to apply them to any form of  
18 addressable media, those that are available today,  
19 such as selective binding, addressable cable and  
20 satellite, some of the Internet applications you  
21 can hear about later this afternoon, and those  
22 that, you know, we've hardly thought about in the  
23 future, wireless, interactive television and things  
24 that haven't even been invented yet today.

25 And these tools can also be used as a

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1 planning template, we can bridge them into  
2 syndicated research bases, such as Scarborough,  
3 MRI, Simmons, Nielsen, and help us optimize the  
4 value of our mass media, of our print and our  
5 broadcast spending.

6 So, all of this is based on our study of a  
7 high potential end user.

8 So, what does this do for us in the end? I  
9 mean, basically it helps marketers invest their  
10 marketing dollars smarter, more efficiently  
11 reaching customers across virtually every channel,  
12 and for consumers, it means hopefully you receive  
13 more of the offers you want, and fewer of the  
14 offers that you don't. And that to us is a win-win  
15 for everybody. Thank you.

16 MS. CULNAN: We've got a lot of time left,  
17 we've got about 25 minutes. What would you like us  
18 to do?

19 MS. ALLISON BROWN: Do you want to take  
20 questions?

21 MS. CULNAN: Sure, we'll take questions.  
22 We changed our minds, we'll take some questions.  
23 And there's a microphone over here, so I think  
24 Jason Catlett has a question.

25 And then if you would address your question

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1 to one of the panelists, if that's your preference,  
2 please do so.

3 MR. CATLETT: May I address it to you,  
4 ma'am?

5 MS. CULNAN: You may.

6 MR. CATLIN: Hello, this is called the  
7 bleeding edge of technology. Well, I don't think  
8 it's doing anything, but I'm going to hold it here  
9 anyway.

10 Mary, you said that you were not going to  
11 address co-op databases on the basis that there are  
12 so few of them. And I think that's like saying  
13 we're not going to address suppliers of Windows  
14 operating systems because there are so few of them.  
15 The dominant co-op database, Abacus Direct, really  
16 has enormous influence, and I think it's a model  
17 different to but very relevant here.

18 So, could you take a minute to describe  
19 what co-op databases do?

20 MS. CULNAN: I may punt this to one of the  
21 panelists who have more experience. I will say one  
22 thing, for those people that are interested in  
23 co-op databases, and particularly in Abacus Direct,  
24 their data dictionary is on the DoubleClick  
25 website, so if you go to doubleclick.com and you

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1 click on Abacus, you can see exactly what kind of  
2 information they have acquired, and I think  
3 probably it's a really good example of  
4 transparency, assuming you know to go there and  
5 look for the data.

6 So, because Lynn is actually running a  
7 co-op database, and again, it's not that we didn't  
8 want to talk about these because we didn't want to  
9 hide anything, but because we were doing the broad  
10 overview, we decided as a panel it would confuse  
11 things, thinking our talks would take longer if we  
12 went off and then couldn't fit it all into the  
13 slide.

14 MS. WUNDERMAN: I do promise that we will  
15 spend some time this afternoon talking about the  
16 co-op database model, and specifically about my  
17 company, I-Behavior, unless there's something  
18 specific to these applications that you would like  
19 to talk about now.

20 I mean, I could go into the concept of  
21 co-op database, it's going to be a little redundant  
22 this afternoon.

23 MR. CATLETT: Why don't you spend 30  
24 seconds describing a co-op database.

25 MS. WUNDERMAN: A co-op database is formed

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1       when marketers share their customer names and  
2       related buying information in order to gain access  
3       to names of qualified prospects as well as  
4       additional data on their customers that might  
5       otherwise be unavailable for them to market and to  
6       build their business.

7                   So, if we had, I don't know, Mary, if you  
8       could put back your first slide.

9                   MS. CULNAN: Sure.

10                  MS. WUNDERMAN: I mean, basically with a  
11       co-op database, if we move the consumer aside to  
12       the right and we were to create another box, what  
13       you would see is the customer databases, the  
14       compiled data would all come into a co-op database  
15       and we would have a consolidation of many customer  
16       files from marketers, publishers, catalogers,  
17       e-tailers, et cetera, all going into one database  
18       as well as it would be overlaid with the  
19       demographic or the psychographic as well as the  
20       census data we've been talking about earlier, all  
21       to form a positive record. And that is the rich  
22       behavioral and demographic base upon which  
23       marketers would be able to do selections from that  
24       file.

25                  MR. CATLETT: Thank you.

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1                   MS. CULNAN: One difference I think it's  
2                   important to point out, you have to be a partner in  
3                   the co-op database.

4                   MS. WUNDERMAN: Yes, you do.

5                   MS. CULNAN: You have to put data in in  
6                   order to take advantage of the data that's there,  
7                   as opposed to the compiled databases where  
8                   basically there's no relationship between  
9                   contributing data to the database and being able to  
10                  acquire data from the compiler.

11                  MS. WUNDERMAN: Yes, and I will also say  
12                  that generally that there's notification to the  
13                  consumer about sharing data with trusted third  
14                  parties as well as the online component, there are  
15                  privacy protections as well.

16                  MS. CULNAN: Anybody else? There's a  
17                  question toward the back.

18                  MR. TUROW: Would you talk just a little  
19                  bit about the way databases get purged, based not  
20                  just on what consumers want, but also recency and  
21                  the decision that certain things become obsolete  
22                  and how those criteria are determined?

23                  MS. WUNDERMAN: I want to make sure that I  
24                  understand your question. You're asking, you know,  
25                  I think on -- in terms of if I have information in

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1 a customer database about an individual's purchase  
2 behavior and over time that that data is no longer  
3 relevant? Is that --

4 MR. TUROW: Yeah, how do you decide -- how  
5 do you decide at what point you purge those  
6 particular data like your sports car. Maybe you  
7 decided to get more conservative about the car and  
8 somebody has not picked it up, do you have any kind  
9 of criteria to which to purge certain kinds of data  
10 after a certain amount of time, based on certain  
11 other criteria?

12 MS. WUNDERMAN: Let me say something about  
13 the compiled data and its value, because they're  
14 not going to be always 100 percent accurate. I  
15 mean, you saw even my income on my own personal  
16 record was not accurate. What's of greatest value  
17 with the compiled data beyond its coverage is its  
18 consistency, and when you're looking for predictive  
19 value, consistency can be even more important than  
20 sheer accuracy.

21 So, the procedures that are in place to  
22 replace that information, the models that are done  
23 to calculate data such as income, it's consistently  
24 done even if it's inconsistent across households.  
25 So that as that data is predictive, it may be

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1 predictive, even though it's not 100 percent  
2 accurate, but if it is predictive, it will rise to  
3 the top, and then virtually it's a numbers game.

4 You will never be 100 percent on any  
5 particular individual or household. What you're  
6 trying to do is increase the probability of  
7 identifying a high potential consumer.

8 So, for one or two or, you know, any number  
9 of people, that data will still not be 100 percent  
10 accurate, it ages over time, and it's the compilers  
11 that capture that information from the various and  
12 sundry public resources or surveys that gets  
13 supplied back to us, it's accurate, it's not  
14 accurate. But if it's still predictive, we will  
15 still work with that information.

16 MR. SMITH: Richard Smith with Privacy  
17 Foundation. I have a question for Lynn. How do I  
18 get my compiled record, just like you got yours, on  
19 the screen?

20 MS. WUNDERMAN: Call me.

21 MR. SMITH: Can everybody call you if they  
22 want to see, every consumer if they want to see  
23 this?

24 MS. WUNDERMAN: I'm sorry, you're asking  
25 you as a consumer, how would you get access to

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1 information? Well, I am not a data compiler, per  
2 se, I mean we get our data from Equifax, there are  
3 others, Experian, and First USA through their  
4 Donnelly unit and Acxiom through their Infobase that  
5 supply this information, but if you as a consumer  
6 are interested in seeing your record on our  
7 database, you can request a copy of your profile  
8 and we'll supply it.

9 MR. SMITH: Do these companies, compiler  
10 companies generally allow consumers to look at this  
11 kind of data?

12 MS. WUNDERMAN: You know, I --  
13 not being a compiler. I would have to say in  
14 today's marketing environment, they should, but I  
15 cannot tell you. Certainly the data that comes,  
16 for instance, from a credit bureau, and the credit  
17 bureau information gets channeled as part of  
18 Equifax and that gets channeled into the Polk  
19 Database, as a credit bureau, you need to be able  
20 to provide consumers with access to that data, but  
21 I'm not familiar with the policies of each and  
22 every compiler.

23 MR. SMITH: Thank you.

24 MS. CULNAN: Okay, I think we're going to  
25 take a break and you want to break for -- you're

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1       going to let the people running this set the rules.

2       Thank you.

3                    MR. WINSTON: This is kind of a unique

4       situation, we're actually ending a little early,

5       but that gives us a little more time for lunch.

6       So, if we could break until about 10:15, and I want

7       to thank the panelists and the Magazine Publishers

8       of America.

9                    (APPLAUSE.)

10                  MR. WINSTON: Also, thank you to the

11       Magazine Publishers of America for supplying our

12       repast out there.

13                  (PAUSE IN THE PROCEEDINGS.)

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1 SESSION TWO

2 CONSUMER DATA: WHAT IS IT?

3 WHERE DOES IT COME FROM?

4 - - - - -

5 MS. ALLISON BROWN: Hi, I'm Allison Brown,  
6 I'm an attorney in the FTC's Bureau of Consumer  
7 Protection, and I'll be the moderator for Session  
8 2, entitled Consumer Data: What Is It? Where Does  
9 It Come From?

10 The overview that we just heard has  
11 provided us with a brief look at data merger and  
12 exchange. Now we will begin a series of in-depth  
13 panel discussions about these practices.

14 This panel discussion will focus on the  
15 original sources of consumer information, and we  
16 have five very experienced and knowledgeable  
17 panelists with us today for the discussion. We  
18 will also have about ten minutes at the end of the  
19 panel for the audience to ask questions.

20 If you're sitting in an overflow room and  
21 you want to ask a question, please come up to the  
22 doorway on the main room here on the fourth floor  
23 at about 11:20 and we'll have a wireless microphone  
24 here so that you will be able to ask the panelists  
25 your questions.

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1                   I will now introduce each person on the  
2 panel and ask the panelist to spend about three  
3 minutes to provide a brief introduction to the  
4 sources of consumer data that businesses use.

5                   C. Win Billingsley is the Chief Privacy  
6 Officer of Naviant, Inc. Naviant is a provider of  
7 marketing tools and integration methodology for  
8 online and offline environments.

9                   Win, please go ahead with your introductory  
10 remarks now and I'll introduce the other panelists  
11 in turn.

12                  MR. BILLINGSLEY: Okay. Naviant is a  
13 leading provider of integrated precision marketing  
14 tools, for both online and offline environments.  
15 So, we really integrate the virtual world with the  
16 physical world.

17                  This capability enables marketers to  
18 identify, reach and build relationships with online  
19 consumers. So, to probably state that in a form  
20 that is more meaningful to you, Naviant has a  
21 database of about 30 million households that are  
22 Internet-enabled.

23                  So, our niche is a database of people who  
24 have the capability to buy products and services on  
25 the Internet. This data is collected primarily

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1       through product registration data, and we'll talk a  
2       little bit more about that in the session on how  
3       this actually occurs.

4               The data is fully permissioned. We only  
5       want people in our marketing database that  
6       permission us to do so. You know, an individual or  
7       an Internet user that does not want to participate  
8       in Naviant's database is not included in the  
9       database.

10               And then there are other processes that we  
11       have in place to make sure that our data is  
12       accurate and as useful as possible.

13               MS. ALLISON BROWN: Okay, Elisabeth Brown  
14       is Senior Vice President of Product Strategy for  
15       Claritas. Ms. Brown oversees the development of  
16       new data products and services, including  
17       demographic, cartographic and segmentation systems,  
18       and the management of the software and applications  
19       that are delivered to Claritas clients.

20               Ms. Brown?

21               MS. ELISABETH BROWN: Thank you. One  
22       comment, too, I have actually been not only am I a  
23       member of the club, but I have been a client, so I  
24       was actually a client of the Claritas marketing  
25       products and services before I joined the company.

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1       So, I do have a little bit of perspective on how it  
2       can be used and how we used it when I was at the  
3       Prudential Insurance Company.

4               Claritas is a marketing information company  
5       that has been in business for over 30 years, which  
6       makes us one of the more mature companies in this  
7       industry -- as evidenced by a recent Wall Street  
8       Journal article that referred to Claritas as the  
9       granddaddy of demographic providers.

10              Claritas serves companies in financial  
11       services, telecommunications, energy, automotive,  
12       retail, restaurant and real estate industries, and  
13       we have clients ranging from the top Fortune 500  
14       companies to small, independent consultants.

15              I'll just give you a little bit of  
16       background. Over 30 years ago, Claritas' founder,  
17       Jonathan Robbin, who was a Harvard social  
18       scientist, was analyzing U.S. Census data and  
19       settlement patterns. He hypothesized that American  
20       neighborhoods reflected the old adage that birds of  
21       a feather flock together, and therefore, the  
22       products and services that Americans consumed could  
23       be predicted simply by knowing summary level  
24       demographic information about the area, or "you are  
25       where you live."

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1                   This was referred to in the first slide as  
2                   geodemography. Thirty years later, our models have  
3                   become more sophisticated and are able to dissect  
4                   markets at a much lower level of geography, but  
5                   that same old basic premise still holds true that  
6                   by knowing some small amount of demographic  
7                   information, you can infer or predict the  
8                   likelihood that a household will be interested in  
9                   the products and services that you're offering.

10                  So, we provide demographics and other  
11                  consumer and business data on multiple levels of  
12                  geography, delivered through our various mapping  
13                  and marketing application software platforms.

14                  We are probably most well known for our  
15                  consumer segmentation systems, for example, Prism,  
16                  which was also identified earlier when Mary was  
17                  speaking about Winner's Circle and what some of the  
18                  attributes of a neighborhood would be that would be  
19                  tagged as Winner's Circle across the country. Our  
20                  consumer product demand estimates that our clients  
21                  use to more efficiently market their targeted  
22                  customers and prospects, which you could refer to  
23                  as surrogate or inferred data.

24                  Claritas data and services are used for  
25                  broad marketing functions such as tracking new

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1       customers, retaining current customers, determining  
2       site locations and appropriate sales and marketing  
3       distribution channels, and we help with more  
4       efficient reach strategies and media planning.

5                   So, basically, Claritas marketing  
6       information helps our clients offer the right  
7       products and services in the most appealing way to  
8       the consumers and prospects. We provide basically  
9       the benchmark information or the total universe  
10      data that our customers can use to compare their  
11      current customers and markets against so that they  
12      can make better marketing decisions. Thank you.

13                  MS. ALLISON BROWN: Next we have Paula  
14       Bruening who is Staff Counsel for the Center for  
15       Democracy and Technology. The Center for Democracy  
16       and Technology is a non-profit public interest  
17       organization that seeks practical solutions for  
18       enhanced free expression and privacy in global  
19       communications technologies.

20                  MS. BRUENING: Thank you.

21                  CDT has been asked today to discuss the  
22       issue of public records as a source of information  
23       about individuals from a factual basis, and as many  
24       of you know, CDT generally has a specific viewpoint  
25       on this issue. I will talk today about the factual

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1 basis in my opening remarks and then any other  
2 comments will be reserved for the Q&A, but I would  
3 like to encourage the FTC to go to the state level  
4 and to some other resources and some organizations  
5 that are doing work on this issue, because I think  
6 some of the really difficult work on how the  
7 information is collected and how it is being used  
8 specifically is being done at the state level. And  
9 I'm happy to give the FTC that information.

10                   Public records maintained by government  
11 agencies disclose a vast array of detail about an  
12 individual's life, activities and personal  
13 characteristics. At the federal level, most  
14 personal information is not available to the  
15 public, because of the privacy exemption in the  
16 Freedom of Information Act and the Privacy Act of  
17 1974.

18                   However, bankruptcy records are an  
19 important exception to this rule and are maintained  
20 by the federal courts. These records are a source  
21 of detailed financial information, and the  
22 sensitivity of that information has been recognized  
23 by the Office of Management and Budget, which has  
24 produced a study on this issue called Financial  
25 Privacy in Bankruptcy: A Case Study on Privacy in

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1       Public and Judicial Records.

2               At the state and local level, however, the  
3       types of records that are maintained are different,  
4       and the laws and policies governing records yield  
5       disparate acts and disclosure practices, but it is  
6       possible to construct a detailed profile about an  
7       individual from public records.

8               And while I will spare all of you the  
9       exhaustive list of all the sources of information,  
10      I'll name a few: Name and address information come  
11      from voting records; land titles are a source of  
12      home ownership information; property taxes can give  
13      you assessed value of homes; birth and death  
14      records give you information about an individual's  
15      parents.

16              The list goes on, there are occupational  
17      license records, motor vehicle records that can  
18      tell you about an individual's make and model of an  
19      automobile, voter registration gives you party  
20      political affiliation, and hunting and fishing  
21      licenses, boat and airplane licenses can give you  
22      information about how a person likes to spend their  
23      leisure time.

24              There may be considerably more information  
25      available in public records about an individual who

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1 has interacted with the courts as a criminal  
2 defendant, as a plaintiff or defendant in a civil  
3 litigation, in a divorce proceeding, as a juror, as  
4 the beneficiary of a will.

5 Public access to government records serves  
6 several important goals. Individuals need  
7 government information to make political decisions  
8 about government programs, legislative and  
9 regulatory options, and candidates running for  
10 office.

11 Government records also assure the  
12 accountability of individuals as in the case of  
13 business and real estate transactions. However,  
14 it's important that public record information be  
15 used for the reasons it was collected. This  
16 information was not meant to be searchable in a  
17 database, nor was it intended to be used in  
18 marketing. And simply because there is a tradition  
19 of collection of information, important decisions  
20 need to be made on a case-by-case basis about the  
21 appropriateness of access to public records and the  
22 role of consumer choice.

23 MS. ALLISON BROWN: Thank you.

24 Michael Pashby is Executive Vice President  
25 and General Manager for Magazine Publishers of

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1 America where he has also served as Executive Vice  
2 President of Consumer Marketing. Before joining  
3 the MPA, Mr. Pashby was president and publisher of  
4 Art and Antiques Magazine, vice president of  
5 circulation and new product development for Gruner  
6 + Jahr USA, and Managing Director of U.S.  
7 Operations for Marshall Cavendish.

8 Michael?

9 MR. PASHBY: Thank you. That sounded  
10 impressive.

11 MPA represents about 85 percent of the  
12 consumer magazine -- dollar volume of the consumer  
13 magazine industry in this country, and about 85  
14 percent of all magazines are sold through the  
15 mails, using direct mailing techniques or direct  
16 marketing techniques of extremely varying  
17 sophistication.

18 The use of credit cards in our industry is  
19 extremely small, but is now growing. Our members  
20 strongly agree that we must protect the privacy of  
21 our readers, and I think our industry has done a  
22 very good job over the years in balancing our  
23 legitimate business interests and our consumers'  
24 reasonable expectations of privacy.

25 Obviously we value our readers and we

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1       wouldn't be in business without them, so our  
2       industry is constantly looking for ways to improve  
3       that service to our readers.

4               It's important to note that when our  
5       readers ask us not to share information about them,  
6       we don't. In the information section of most  
7       magazines, the publisher discloses that the  
8       subscription list may be rented to appropriate  
9       businesses.

10               The magazine offers an address or toll free  
11       number so that the reader can opt out. And many  
12       magazines are taking advantage of the Internet to  
13       inform consumers of their privacy policies, and  
14       give consumers an additional opportunity to opt  
15       out.

16               We're very careful with respect to the  
17       customers, to the wishes of the customers who  
18       choose to opt out. Generally when a consumer  
19       requests that publishers not share information,  
20       that publisher will not only remove the consumer  
21       from their own internal rental lists, but will  
22       refer the consumer to the DMA so that the consumer  
23       can request to be on their nation-wide do-not-mail  
24       list.

25               That said, magazines are very good sources

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1 for consumer data. And the reason is very simple.  
2 More than any other medium, the choice of which  
3 magazines a consumer reads can tell a lot about a  
4 person, what a person likes, and his or her  
5 interests.

6 In enabling our readers to get information  
7 about products and services that are of interest to  
8 them, it is advantageous to everyone. Our readers  
9 are given more choices, they get information about  
10 products of their interest and life styles, and  
11 most importantly they're not inundated with  
12 advertisements for products they have no interest  
13 in.

14 Businesses benefit because they can target  
15 their advertising to consumers who are most likely  
16 to be interested in their products, saving them  
17 time and money. And for magazines, with a cost of  
18 mailing now between 65 cents and a dollar per  
19 piece, and that's before the Post Office applies  
20 for its newest rate increase this June, the cost of  
21 acquiring a consumer, when the response rates are  
22 in the low single digits, and in a very competitive  
23 market, is extremely expensive.

24 But sharing information only works if it's  
25 beneficial to everyone. Our magazine subscriber

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1 lists are our most important and valuable assets,  
2 our readers do not want to get advertisements for  
3 products they don't care about, so the magazine  
4 industry is selective about letting advertisers use  
5 their lists.

6 If a business intends to mail a  
7 solicitation to a consumer, magazine staff review  
8 that promotion to ensure its use is appropriate.  
9 Most magazine publishers will not rent their list  
10 to telemarketers because they have little control  
11 over how the list is used, but if lists are rented,  
12 we expect magazine staff to review the  
13 telemarketing script.

14 And very importantly, the list is rented,  
15 it's not sold. That means the advertiser can use  
16 it only one time. And publishers, as a general  
17 course, see their lists and track how that list is  
18 used.

19 Thank you for inviting us again.

20 MS. ALLISON BROWN: Thank you.

21 Our final panelist is Ted Wham. Ted is the  
22 President of Database Marketing for the Internet, a  
23 sole proprietorship consulting practice. His  
24 career has been concentrated in the direct and  
25 database marketing industries, focusing most

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1 recently on Internet-enabled marketing  
2 applications.

3 Ted?

4 MR. WHAM: The benefit of having the last  
5 name of Wham is that although I am always at the  
6 end of the line, I always get to hear what  
7 everybody says before me and tailor my comments to  
8 help amplify on those areas as well.

9 Database Marketing is an independent  
10 consultancy that consists of myself as an  
11 independent business person working out of my home,  
12 and billing my cat at very low billable rates, I  
13 have had an opportunity to work with organizations  
14 such as Viacom Division, Curriculum Corporation,  
15 Hewlett Packard, I have worked with Cisco Systems  
16 here recently, NCR and so forth, helping them  
17 formulate Internet privacy strategies and also how  
18 to use information about consumers for part of  
19 their contact strategies.

20 In general, the information which is  
21 available about consumers in the United States  
22 starts from very gross aggregate levels, compiled  
23 information which is largely demographic  
24 information, and as Ms. Wunderman explained in the  
25 session immediately before this one, to a lesser

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1 extent psychographic information.

2 You move from that into information which  
3 is available from a wide range of public records,  
4 such as the ones that Ms. Bruening referred to, and  
5 ones that I have personal experience with as being  
6 on the receiving side of some of the solicitations  
7 for there.

8 That's important because those public  
9 records the consumer doesn't have much choice in  
10 terms of their participation in those lists, it's  
11 an obligatory process. If I want to vote, I have  
12 to register to vote, and if I register to vote,  
13 those public records are then going to be available  
14 for purposes unrelated to my voting, and, you know,  
15 that's kind of the way it is.

16 There is then a second tier, and that is  
17 government supported monopolies, and those  
18 monopolies are, because they're either a natural  
19 monopoly such as the provision of your gas service  
20 or your telephone service, and for instance white  
21 pages, telephone white pages are a major source of  
22 compiled list information, but there's also  
23 government supported monopolies in the form of  
24 patent protection and copyright protection, which  
25 gives a form of a unique ability to sell a product.

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1                   So, for instance, if I want to operate with  
2                   a computer operating system called Windows, I have  
3                   to support the patent and copyright protections  
4                   available from Microsoft until those patents run  
5                   out, and I have to use that information and  
6                   Microsoft has that and has the opportunity to share  
7                   that information, if that is their business  
8                   practice to do so.

9                   There is a whole range of different  
10                  products from drugs that you have to take to the  
11                  type of services that you buy and so forth, where  
12                  that government-mandated protection is there. For  
13                  monopolistic practice it serves a public good in  
14                  terms of inspiring innovation.

15                  The last area is information which is in a  
16                  much more competitive area. I can go to any of a  
17                  number of different retailers to buy clothing, for  
18                  instance, and the retailers when I make that  
19                  purchase are going to collect various amounts of  
20                  information.

21                  So, if I buy at Sears, that may be a  
22                  largely anonymous transaction, especially if I make  
23                  it in a cash basis. If I do it through a credit  
24                  card, they may have more information, and some  
25                  retailers through a traditional retail environment

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1       such as Radio Shack actually will ask you for  
2       information about your name and address, and  
3       collect that information online.

4               Other businesses who run their business  
5       model through a mail order process such as Lands  
6       End and J. Crew and so forth become much, much more  
7       adept at collecting very specific information about  
8       you because what you've bought in the past becomes  
9       most predictive about what you will buy in the  
10      future. It's dramatically better than demographic  
11      information, dramatically better than any  
12      information you're going to get from public  
13      records.

14               If I bought something from J. Crew in the  
15      past, I will be better than any prospect that they  
16      can find to buy stuff from them in the future.

17               But there's an opportunity for a consumer  
18      to make a choice in those purchases on whether  
19      they're going to choose retailer A versus retailer  
20      B, and so there's an opportunity for control there.

21               So, in looking at this, I think it's  
22      important to look at the spectrum of how that  
23      information is collected in terms of the consumer's  
24      ability to control the use of that information  
25      downstream.

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1                   MS. ALLISON BROWN: Now that you've heard a  
2 brief introduction to the sources of consumer data  
3 that businesses use, I'm going to ask our panelists  
4 some questions so that we can learn some more  
5 specifics.

6                   Win, what data elements does your business  
7 collect about consumers and how do you collect the  
8 information?

9                   MR. BILLINGSLEY: Most of us have done a  
10 product registration or a software application  
11 registration, and it's very important for the  
12 manufacturer of that product to get to know who  
13 their end user customers are, because all of them  
14 distribute their products and services through some  
15 intermediary. So, they're really isolated from who  
16 their end user customers are.

17                  The way they try to solve that problem, and  
18 also to provide customer support and service, is  
19 through a registration process. So, Naviant  
20 provides software that is used by companies that  
21 manufacture computer hardware and software products  
22 to facilitate that registration.

23                  So, the data that we collect for the  
24 company includes all the information that we've all  
25 seen on those product registration forms, but the

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1 only data that Naviant really uses that goes  
2 forward into a marketing database is the name and  
3 the address, and the fact that this is an  
4 Internet-enabled household.

5 And that's really what we focus on and what  
6 we collect. The other information is analyzed  
7 statistically and then passed back to the  
8 manufacturer, and they can use it for various  
9 business purposes to know who their customers are.

10 So, name and address, and the fact that  
11 this individual is Internet-enabled is key to  
12 our -- that's where the cycle starts with Naviant.

13 MS. ALLISON BROWN: What other data  
14 elements do businesses collect about consumers and  
15 how are they collected? Anybody? You can just  
16 either raise your hand or put your tent card on its  
17 side? Ted?

18 MR. WHAM: Yeah, I forgot the tent card on  
19 its side, I don't live in Washington, D.C. That's  
20 a rule.

21 Businesses often times have an insatiable  
22 demand for information. They would collect as much  
23 information as the consumer will spend time to  
24 provide for them. In fact, one of the services  
25 that I provide to my consulting clients is that I

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1 will get the question, How much can we ask on a  
2 registration process or in a survey process or  
3 through a purchasing application before the  
4 consumer is finally going to go Aye, "I don't want  
5 to do this anymore" and will bottom out of that,  
6 and they will test that very aggressively and try  
7 several different formats. If we ask this extra  
8 question, what's going to happen here? If I format  
9 this as a drop-down question instead of a radio  
10 button, what happens here and so forth. They will  
11 collect as much information as they can until they  
12 reach a point where the collection of that  
13 information degrades completion of the desired  
14 task.

15 MS. ALLISON BROWN: Betsy?

16 MS. ELISABETH BROWN: One of the things  
17 that I didn't go over specifically is that there  
18 are lots of sources of public information out  
19 there, including the U.S. Census data, which is  
20 pretty hot right now since it's been recently  
21 updated.

22 Many companies are trying to get at this  
23 information because it's a very good source for  
24 benchmark information to understand sort of the lay  
25 of the land. And when we talk about benchmark

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1 information, there's a lot of other domain  
2 information, public domain information that is also  
3 collected and used by businesses.

4 Just from my experience at Claritas and my  
5 experience with some of these customers, they  
6 really do use a variety of information for  
7 different business purposes, and from what we've  
8 seen, we -- at Claritas, we try to assist them by  
9 updating the demographic information annually so  
10 they do have these benchmarks and we use lots of  
11 different input sources, including consumer surveys  
12 that are out there, you may have heard of people  
13 like Simmons Market Research Bureau, Mediemark,  
14 Nielsen Net Ratings, Scarborough, all of these are  
15 collected with consumer consent, they're pretty  
16 much anonymized in terms of you never really know  
17 who these individual consumers are. Basically that  
18 data is used and compiled and turned into models  
19 that really say if the person is in this  
20 demographic characteristic, they have a higher  
21 likelihood than average to do these behaviors.

22 Some of the magazine data is used that way  
23 as well. You can either use the individual  
24 registration data or pretty much the anonymized  
25 version which gives you the, quote, profile.

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1                   So, there are many, many databases that  
2                   Claritas and other companies produce and put out  
3                   there, and the only way that information is linked  
4                   back to a customer record is through an inferred  
5                   modeling process, which either takes into account  
6                   what we believe their demographics to be, or  
7                   something as simple as the zip code or zip plus  
8                   four in which they live.

9                   MS. ALLISON BROWN: And can you be a little  
10                   more specific about the types of information that  
11                   Claritas gets from surveys, you know, either  
12                   through Simmons or through its own surveys?

13                   MS. ELISABETH BROWN: Depending on the  
14                   panel, Simmons and Mediemark Research have various  
15                   surveys that they put out there, some of them are  
16                   books of information that ask everything from how  
17                   much peanut butter do you eat a week, to what  
18                   brands do you prefer, what media you like, how  
19                   often do you spend in front of the television.

20                   A.C. Nielsen actually captures specific  
21                   readership and views of which television programs  
22                   and what day parts in terms of which actual  
23                   physical programs you're watching. And a lot of  
24                   that data, again, it's all consumers are signing up  
25                   for these panels. That's the panel type of

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1 research.

2 In addition, there's other types of  
3 research which is more of the research where you're  
4 calling up people on the telephone or just sending  
5 them a direct mail package and asking them  
6 something more specific about the financial  
7 services that they're using, or the types of  
8 Internet services they have and that type of  
9 nature.

10 Once again, most of this data, what happens  
11 is that all the data is collected at a household  
12 level, but when it's modeled and analyzed, it's  
13 analyzed in terms of demographic characteristics or  
14 segmentation codes and not -- those people that  
15 participate in the panel, that data is never used  
16 for specific marketing purposes back to those  
17 individuals.

18 MS. ALLISON BROWN: Thank you. Paula?

19 MS. BRUENING: Yes, I just wanted to talk a  
20 little bit about business use of public record  
21 information, and clearly the kinds of information  
22 that I talked about in my opening remarks are  
23 valuable to businesses in their marketing pursuits.

24 The problem comes with the fact that the  
25 information has been given up by the individual, is

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1       given up so that they can participate, as Ted Wham  
2       said, in some very basic functions of life. They  
3       want to drive a car, they want to buy a house.  
4       They've had a baby. Someone's been born or died in  
5       the family. Someone's received money in a will.

6               And I think that to say that Well, that's  
7       being used for other purposes, and that's just the  
8       way it is, I think is a -- is not a really very  
9       thorough analysis. I think that if anything, what  
10       the information age, computerization, will allow us  
11       to do is give us an opportunity to re-examine those  
12       uses to decide whether those are appropriate,  
13       whether we can limit the access to that  
14       information, to the -- to something closer to what  
15       the initial collection was intended for.

16               MS. ALLISON BROWN: Are there currently any  
17       restrictions on the use of public record data for  
18       marketing? Anybody?

19               MR. WHAM: There's one large restriction  
20       that I am familiar with and that is recently there  
21       was legislation passed at the federal level which  
22       gives consumers an opportunity to opt out of having  
23       their information about their automobile  
24       registration used for marketing purposes.

25               MS. BRUENING: That's opt in.

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1                   MR. WHAM: Opt in, opt out, excuse me,  
2                   okay. So, but it was very, very significant,  
3                   because prior to that legislation 46 of 50 states  
4                   made their consumer automobile registration  
5                   information available to the list rental  
6                   marketplace, and what type of car you own and drive  
7                   is extremely predictive of your household income.  
8                   It's one of the most predictive items.

9                   And so if I wanted to drive a car in the  
10                  state of California, I didn't have any choice, that  
11                  information was going to make it into R. L. Polk's  
12                  database.

13                  That's an example where there have been  
14                  some restrictions recently.

15                  MS. ALLISON BROWN: Michael, I think you've  
16                  been wanting to say something?

17                  MR. PASHBY: I was just going to say the  
18                  magazines themselves collect a relatively small  
19                  amount of information about their consumers. The  
20                  sort of information that they have is the date of  
21                  purchase, the source of purchase, whether it's by  
22                  the telephone or from a magazine previously bought,  
23                  whether it's through direct mail. The number of  
24                  times they've purchased, the value of the purchase.

25                  That's the basic information that a single

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1       magazine would have, that information can become  
2       more valuable if you're a multimagazine publisher  
3       or you have other lines of publishing so you can  
4       then create a broader profile of the person if  
5       they're also buying books or magazines in different  
6       interests.

7               But the interesting thing about magazines,  
8       is that on a -- say a broad interest magazine, one  
9       of the seven sisters, when a publisher is trying to  
10      promote to the consumer, probably the most useful  
11      type of information that the publisher will have is  
12      cluster information. If a person is of a certain  
13      age and lives in a certain area, that their  
14      neighbors may be likely to buy the same magazine.

15               The more specialized you get in a magazine,  
16       let's take a woodworking magazine, just because a  
17       person lives next door to someone who buys a  
18       woodworking magazine, there is absolutely no reason  
19       to suppose that the other person would want to buy  
20       one.

21               So, the use of the use of data for the  
22       small -- the small publisher, the small business,  
23       is becoming far more important. We used to have  
24       something, until a couple of years ago, called  
25       Publishers Clearinghouse and American Family

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1       Publishers, which mailed into every household in  
2       the country, and the consumer could self select  
3       their magazines.

4               Nowadays, those mailings are a thing of the  
5       past. And information to a publisher has become  
6       far more important, to be able to target their  
7       consumers.

8               MS. ALLISON BROWN: Betsy?

9               MS. ELISABETH BROWN: There are fairly  
10       significant restrictions on credit card information  
11       and data that's used to actually make specific  
12       financial offers, from the list compiler companies,  
13       like Equifax and Experian. And although I don't  
14       represent those companies, I'm not well versed in  
15       specifically what those criteria are, the financial  
16       services companies that we've worked with, they can  
17       only use certain information if they're actually  
18       making a credit offer, where they are willing to do  
19       a pre-approved credit offer, which means that they  
20       are going to say because I have pulled this  
21       information on you, I'm willing to say that I will  
22       guarantee that if I make this offer, you can have  
23       this product.

24               And that data cannot be used by another  
25       portion of the bank to make another type of offer,

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1       whether or not extending credit. So, those  
2       protections are in place, I don't have all the  
3       details about all the specifics, but it's important  
4       to know that they're out there.

5                   MS. ALLISON BROWN: Right, and the FTC is  
6       very familiar with the Fair Credit Reporting Act  
7       and the restrictions on credit data, so that's  
8       useful to know, although we are focusing here on  
9       data that's not being used for credit decisions.

10                  Paula?

11                  MS. BRUENING: Yes, I just wanted to go  
12       back to the Driver's Privacy Protection Act. I  
13       think that that piece of legislation really  
14       reflects heightened consumer concern about the  
15       incompatible use of this public record information,  
16       and it is a response to that.

17                  And I think what it does is really offer to  
18       individuals who are participating in these basic  
19       life experiences, the same kinds of choice that we  
20       have come to expect in the commercial realm. We  
21       require notice and choice when we're doing business  
22       now with a website, or with an organization, and  
23       something -- legislation like the Driver's Privacy  
24       Protection Act offers that same kind of consumer  
25       choice, which I think is critical here.

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1 MS. ALLISON BROWN: Ted?

2 MR. WHAM: Just a couple of concepts I  
3 would like to throw out there, and I would like to  
4 pierce a couple of notions about what's happening  
5 with data out there.

6 There is certainly data just being  
7 collected in a permissioned basis. There is also  
8 certainly information which is being collected  
9 which is not personally identifiable and is going  
10 through a more of an aggregation, a blending type  
11 of a process.

12 Ms. Brown talked about some of the  
13 practices of Claritas, and Claritas uses largely,  
14 if not exclusively, nonpersonally identifiable  
15 information available from census tract records  
16 from U.S. Government surveys through the census  
17 process, but there's an immense amount of data  
18 which is collected which is not permissioned in any  
19 way, so the consumer is not being asked whether it  
20 is okay for that information to be shared with  
21 third parties, and there's an immense amount of  
22 information which is available that is, you know,  
23 personally identifiable and shared with third  
24 parties quite readily.

25 So, I would have you think, we have an

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1       especially erudite audience in terms of knowing how  
2       this process works, although we're all here in this  
3       workshop, I think a lot of us have an understanding  
4       walking in the door how this process works. But if  
5       you thought back to your five most recent  
6       purchases, I would suspect that there are very few  
7       of us in this room who would know whether the  
8       companies with whom they did that transaction have  
9       a process of sharing that information with third  
10      parties, okay?

11           So, you know, think about what you've  
12       purchased most recently, and there are many, many  
13       companies who the difference between profit and  
14       loss for those companies is made by selling their  
15       customer information to noncompetitive businesses  
16       who are going to be targeting the same type of  
17       business.

18           So, if I'm buying a computer peripheral and  
19       it's for an obscure, you know, system, other  
20       customers that sell computer peripherals to that  
21       same obscure system in a noncompetitive way, can  
22       almost invariably buy that information.

23           And the best example that I can give of  
24       that is the Bible for mailing lists in the United  
25       States, the Standard Rates and Data System, SRDS.

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1 I have a friend who is a list compiler, and before  
2 this session, I called her and I said, How many  
3 pages is that book these days? And the current  
4 volume exceeds 3,500 pages. Something on the order  
5 of 100,000 distinct mailing lists are available for  
6 rental in the United States. Most of those, the  
7 majority of those, with distinct personally  
8 identifiable information in them.

9 MS. ALLISON BROWN: Win?

10 MR. BILLINGSLEY: I would just like to make  
11 one other point and discuss an anomaly that we face  
12 in our data collection process, in processing  
13 warranty information. Some of that data is  
14 collected via a web browser technology, fully  
15 Internet-based, and clearly when you collect data  
16 using that methodology, it comes under the fair  
17 information principles of notice, choice, access,  
18 security and enforcement, but there is also a large  
19 portion of that data that's not collected using  
20 browser-based technology. It's collected using a  
21 dial-up, a synchronous modem capability with an  
22 application that is loaded in the PC.

23 So, some people would make the contention  
24 that since you're not on the Internet, that is  
25 offline data. Now, you know, we have struggled

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1       with how to deal with that issue, and the way we  
2       resolve it in Naviant is we treat data collected by  
3       either one of those two methods by the more  
4       rigorous online marketing data collection rules,  
5       but it is an anomaly that I think should be  
6       addressed so that there is clarity provided in how  
7       people that try to collect data in an ethical and  
8       permissioned way, how they really should operate  
9       when they face these kinds of dilemmas.

10           MS. ALLISON BROWN: I do want to go back to  
11       some of the specifics about the data that are being  
12       collected here. Betsy, you've talked a little bit  
13       about census blocks, zip code information, and zip  
14       plus four information. Can you give us a sense of  
15       how many households are in a census block, versus a  
16       zip code block, versus a zip plus four?

17           MS. ELISABETH BROWN: Yes, a zip plus four  
18       would probably be the lowest level of geography,  
19       not even geography, because there aren't  
20       boundaries, but the lowest level at which you can  
21       compile information that's not at household level.  
22       And generally a zip plus four can have anywhere  
23       from four to ten households in it.

24           Most of the zip plus four data that gets  
25       compiled, they have factors in there whereas if

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1       there isn't enough information for a particular  
2       variable, that is data-filled so that you don't  
3       have any privacy issues.

4               The next level up, a block or block group  
5       tends to have anywhere from 250 to 350 households.  
6       Zip codes can have anywhere from a few thousand to  
7       25,000. They're not really cohesive types of  
8       geographies. And census tracks are anywhere from  
9       1,200 and up.

10               So, low enough levels of geography so that  
11       if you're a broad, when you're looking at some of  
12       the broad applications that we're talking about,  
13       when companies are just trying to understand the  
14       lay of the land, for example, generally zip codes,  
15       counties, census tracts are a good way for them to  
16       really understand what's going on in a marketplace,  
17       if they want to enter the marketplace or not.

18               And what we see is that there's different  
19       levels of using some of these data. A lot of the  
20       clients that we deal with will use a lot of this  
21       information for more of their strategic marketing  
22       purposes, and when they go out to actually  
23       implement a program, they will buy a direct mail  
24       list.

25               The attributes that they use to understand

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1       their total marketplace may be different than they  
2       actually use on the implemented direct mail list.  
3       And I think Lynn went over that a little bit, which  
4       is that what you'll find is that just because they  
5       know that a certain demographic characteristic is  
6       currently their, quote, best customer, when they  
7       actually go to pull the mailing list, there are  
8       many different market -- let's say environments  
9       that will cause them to maybe change a specific  
10      type of demographic that they're going after, or  
11      they'll look at a list and they'll find that the  
12      people that they most want to attract, let's say  
13      for private banking, are not direct marketing type  
14      of customers, that they really aren't going to  
15      reach them through a direct marketing list. They  
16      don't exist much on the list, there isn't enough  
17      data on them and they're not really responsive to  
18      the list.

19           So, I think that sometimes people believe  
20      that these companies have an enormous amount of  
21      information, which they do, but in their practice  
22      of actually rolling out marketing programs, it's  
23      not as succinct as you might think it is, that they  
24      know exactly who their targets are and they can  
25      then implement against those targets. They have to

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1       really use a lot of strategy and analysis to just  
2       try to reach the right person.

3               I don't know if that's a -- there's just a  
4       lot of different ways you can use that type of  
5       information. So, you can move from these  
6       geographic levels down to the household level, but  
7       you may not have an exact fit when you do that.

8               MS. ALLISON BROWN: And we heard a little  
9       bit in the overview about how businesses append  
10      data from third party databases. Can anybody give  
11      any specific examples of what types of data  
12      businesses append to their in-house customer files?

13               Win?

14               MR. BILLINGSLEY: Well, just having a name  
15       and address and a flag that says you're an Internet  
16       household is not a very effective product in terms  
17       of providing marketing lists.

18               So, that base core of information is used  
19       to do a match with various data compilers and  
20       aggregators of information, and then we ingest  
21       certain attributes that are associated with that  
22       name and address. And some of those attributes --  
23       and there's many -- but it would be things like  
24       income range, age range, gender, hobbies,  
25       interests, things of that nature, that we use to

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1       embellish the marketing file so that we can do  
2       selects and generate lists that are targeted for  
3       specific products and services.

4                    MS. ALLISON BROWN: Does anybody want to  
5       add to that?

6                    Michael?

7                    MR. PASHBY: Generally magazines will  
8       append information slightly differently, depending  
9       on the type of magazine. A general magazine will  
10      probably append more information or have the  
11      ability to append more information.

12                  I mean, clearly, the very basic information  
13       of age, income, family size, gender, is generally  
14       available to be appended to the -- to that list,  
15       but the more general the magazine, probably the  
16       more selections that will be made available.

17                  There are a number of companies which will  
18       take a magazine list and add information to it,  
19       creating that database, and the sort of information  
20       that can be appended is everything that's being  
21       talked about today. Whether it be the types of  
22       cars that people own, when they bought a car, the  
23       type of house, the value of the house.

24                  There's a lot of information that can be  
25       appended, but in general, magazines tend to be the

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1 starting -- the starting place rather than the end,  
2 with all that information appended to it, because  
3 they start -- you're starting with the general  
4 interest area, and then it is merged and purged  
5 with other lists during the marketing process.

6 MS. ALLISON BROWN: Thanks. Ted?

7 MR. WHAM: A very typical use of appended  
8 information is to take a large universe file of all  
9 your customers and presume you're a cataloguing  
10 business that has, you know, for conversation's  
11 sake, a million customers that have done business  
12 with you over time.

13 You take a statistically representative  
14 sample of that, of perhaps 10,000 individuals and  
15 you go and append absolutely everything to those  
16 10,000 people you can possibly get your hands  
17 on, from income, age, whether they've got children,  
18 the age of those children, whether they're  
19 grandparents, the type of interests that they have,  
20 all of the psychographic information, everything  
21 you can get to that.

22 And then you run that against statistical  
23 processes and say, Okay, tell me of all of these  
24 different processes, which one of these are going  
25 to be predictive of the ones I care about most.

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1                   And as Ms. Wunderman pointed out this  
2 morning, different businesses care about different  
3 things. Some businesses want lots of transactions,  
4 some businesses need to be very concerned about  
5 turnover, loss of the customers, some long distance  
6 carriers and cellular phone carriers, for instance,  
7 are extremely interested to make certain that  
8 they're getting customers who are going to stick  
9 with them and are not switchers and so forth. And  
10 it varies by businesses.

11                  Once they identify which of those  
12 characteristics are particularly predictive for the  
13 customers that they want, they will then go to the  
14 remaining universe, those 990,000 names that they  
15 never did anything with, and they'll go back to the  
16 original appending firm and say, Please append  
17 these two or three variables that I want. Much  
18 more cost effective than appending all 30 or 50 or  
19 150 variables to the entire universe if only three  
20 of those are going to be productive for what you're  
21 trying to do.

22                  MS. ALLISON BROWN: Betsy?

23                  MS. ELISABETH BROWN: Yeah, that's a very  
24 good point. I think one of the reasons that  
25 Claritas has been in business for 30 years is that

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1       one of the things that we have been able to do is  
2       boil down a lot of those characteristics into  
3       segment codes, which makes it a lot easier.

4               I mean, we have seen in the financial  
5       services arena about ten years ago, they were one  
6       of the first industries to really take customer  
7       file records that they have done, they have a very  
8       -- financial institutions tend to have a very  
9       strong relationship, we talked about what a  
10      relationship was, with their clients. There's a  
11      lot of trust there that the clients are giving a  
12      lot of very in-depth financial information to these  
13      companies.

14               Financial services companies are fairly  
15      conservative from what we've seen with what they do  
16      with the collected information, but in addition,  
17      they didn't really have the databases and the  
18      software capability to manipulate these gigantic  
19      files with so much information that they collect,  
20      nor did they have a good way of updating them.

21               So, even with them collecting all of this  
22      very personal information, they tended to use  
23      companies like Claritas to help them boil it down  
24      and understand from a one code type of an aspect  
25      what can we know about these people quickly and

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1       easily without having to look at 100 or 200  
2       different variables that we've collected over time.

3                   So, that's sort of in essence what a  
4       cluster code is. The basic information we really  
5       need there is just an address that will allow you  
6       to say the likelihood is that these people live in  
7       an upscale suburban neighborhood or an upscale  
8       urban neighborhood. And a real quick example of  
9       how that would be used would be if you knew -- if  
10      you just had straight demographics on someone and  
11      you knew you had two males, 30 years old, and you  
12      figured out that they make about \$50,000, do they  
13      need individual life insurance or not.

14                Not quite enough information for you to  
15      make a decision on that, one male might be single,  
16      doesn't own a home, doesn't really have any  
17      dependents, where the other male might have a  
18      family with three kids, a house, a mortgage, so  
19      having a little bit more rich information on that  
20      would make you look at these two similar  
21      demographics and say I'm going to offer insurance  
22      to the one because they are going to need it and  
23      not the other.

24                Or another quick use is if they're only  
25      using their internal data and they know that they

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1 have got a thousand people who have \$5,000 in their  
2 checking account and always have had \$5,000 in  
3 their checking account, by overlaying some of these  
4 segment codes, you can get a quick idea that five  
5 of those people, that's all they're really ever  
6 going to have in demand deposits at a bank, that's  
7 really all they're qualified to have, and this  
8 segment code would be something like a number, 27,  
9 that would represent a string of demographics that  
10 would predict that that person is probably in that  
11 demographic.

12                   And you might find out that half of these  
13 people have a very high likelihood for using a loan  
14 product. So, if you wanted to offer them another  
15 service, you would be better off offering them a  
16 loan product than the other half who you would be  
17 better off offering an investment product.

18                   So, without having to know a ton of  
19 personal information, you can at least make some  
20 good guesses as to what the next most likely  
21 product is to offer those people.

22                   MS. ALLISON BROWN: And can you give us a  
23 couple of more examples of the segments, I think  
24 that Mary in the overview gave us a couple from a  
25 newspaper article, I think people might be

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1       interested to hear what some of the other ones are  
2       and how many there are as well.

3                    MS. ELISABETH BROWN: Well, we have --  
4       there are several different segmentation systems,  
5       and a segmentation system really starts off as just  
6       a predictive model. So, as Ms. Wunderman was  
7       saying earlier in the session, different industries  
8       care about different data.

9                    So, a very generic model would be something  
10      like our Prism segmentation system that's based on  
11      the demographics of where you've settled, where you  
12      live, there are several more like that out there in  
13      the public domain, and they have -- some of them  
14      have nicknames, they tend to be sort of upscale  
15      suburban, like Blueblood Estates, Urban Singles,  
16      Upscale Urban Singles, Midscale, you know, Urban  
17      Dense Areas.

18                   So, there's lots of different ways that you  
19      can just get a quick snapshot of what the  
20      settlement patterns are in that neighborhood.

21                   And one of the things that we've -- because  
22      these things, as everyone said, as I think Paula  
23      was saying earlier, there's different uses for  
24      that. It's important to know that you're in a  
25      suburban market area if you're trying to sell lawn

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1       mowers. You certainly don't want to be offering  
2       that to urban upscale singles in high rises.

3                   So, some of the data is critically  
4       important to some of the things you're trying to  
5       sell. It may not be very important at all to  
6       somebody who is selling a very targeted niche  
7       magazine that could appeal to many different people  
8       and has no relationship in terms of a geographic  
9       reference.

10                  So, there are 62 Prism clusters, which  
11       means that we have predicted 62 different  
12       neighborhood settlement patterns.

13                  Another segmentation system is based more  
14       on predicting financial services behavior, or  
15       telecommunications behavior. In those segments,  
16       there are about 42 of the financial patterns, and  
17       they are anything from upscale suburban families  
18       with children, upscale suburban singles, upscale  
19       urbanites, those type of cluster types or segment  
20       types, and that's more based on a specific range of  
21       income, asset prediction, age and presence of  
22       children.

23                  So, those -- they're slightly different,  
24       but, you know, basically you can start with  
25       anything. In our audit of the convergence data,

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1       which is the telecommunications, I think we have  
2       about 57 different segments and they're based on  
3       patterns of usage that we have seen in terms of  
4       product usage, and then on the back end, we infer  
5       the demographic segment for that.

6                    MS. ALLISON BROWN: Ted?

7                    MR. WHAM: There's a distinction which  
8       might be valuable for the FTC in doing this,  
9       there's two major categories of lists that you can  
10      consider. One would be compiled list information,  
11      the other being response list information.

12                  Compiled list information tends to be very  
13      broad coverage, it's information about who you are,  
14      whereas response list is more information about  
15      what you've done, what type of products you've  
16      done.

17                  So, if I want to buy something that has a  
18      very broad geographic coverage because I'm offering  
19      a service that has something which is primarily  
20      defined upon where people live and the types of  
21      birds of a feather flock together type of analogy  
22      that is the basis for Claritas' business, then I am  
23      going to want that type of a compiled list.

24                  If I'm trying to find people who have  
25      interest in doing very specific types of activities

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1 and so forth, I am going to want to buy lists from  
2 similar businesses or businesses that point to  
3 similar types of people.

4 Response lists tend to be very narrow. I  
5 can't typically take a response list and very  
6 effectively use that as an overlay tool against my  
7 universe of customers, and say tell me additional  
8 things about this, because if I took my, you know,  
9 300,000 customers and matched them against somebody  
10 else's 300,000 customers, I might find, you know,  
11 700 that match between those two of them.

12 I would have a rich data set for those, but  
13 I wouldn't have enough to make it economically  
14 worthwhile to do that.

15 Right now it's very easy to go from the hub  
16 out to the spokes. Go to a company that sells a  
17 specific product and tell me all of the customers  
18 for that product or set of products that they sell.

19 It's extremely difficult to say that I want  
20 to start at a spoke and tell me all of the hubs  
21 that they're attached to, so go to a specific  
22 customer and tell me all of the products that they  
23 have bought within a category, or perhaps even all  
24 the products they have bought.

25 I will say that although you can't do that

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1 today, there's an enormous economic potential  
2 there, and I am certain that many, many very bright  
3 people have spent a lot of time trying to figure  
4 out how I can come up with a master universe of all  
5 of the computing products that somebody has bought,  
6 or all of the clothing purchases that somebody has  
7 bought, because if I can do that, and if I'm a  
8 marketer selling, you know, an upgrade to a  
9 particular type of computer, that's the golden  
10 list, and I will spend a lot of money to rent names  
11 from that list.

12 MS. ALLISON BROWN: Michael?

13 MR. PASHBY: Yeah. I think in the magazine  
14 industry, one of the most important sets of data  
15 that can be added to a magazine list is catalog  
16 information, and the merging of catalog  
17 information, because it does add the recency,  
18 frequency and value component to the magazine list.

19 If you go back to the woodworking magazine,  
20 a person may buy a woodworking magazine noting that  
21 they're interested, but if you can match that with  
22 catalog information about the purchase of tools or  
23 the purchase of other supplies, and they're showing  
24 some frequency there, that separates out one group  
25 of people who are peripherally involved to

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1       high-volume purchases within that area, and I  
2       suppose it also gives a greater degree of value to  
3       the broader lists, like a news magazine or a seven  
4       sisters magazine, those people may be then  
5       segmented into very specific interest areas.

6           So, you have a -- one of the seven sisters,  
7       but you can match that with kitchen and food  
8       catalogs to show a high interest in cooking. So,  
9       it then becomes much more interesting for other  
10      marketers, and much more targeted to the consumer.

11           MS. ALLISON BROWN: And what do businesses  
12      do to ensure that the data that you collect are as  
13      accurate as possible?

14           Win?

15           MR. BILLINGSLEY: Well, we do several  
16      things. Marketing data does not have to be 100  
17      percent accurate to be effective, but you want to  
18      make it as accurate as you possibly can, within the  
19      economic constraints that you have to deal with.

20           But an example of some of the things that  
21      we do to make sure our data are accurate, even if  
22      you permissioned us to use your data in a product  
23      registration effort, you say yes, I would like to  
24      receive offers from third party -- from third party  
25      marketers regarding products and services that

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1       would be of interest to me.

2                   You don't automatically go into Naviant's  
3       database just because you have permissioned us. To  
4       make sure that we're doing that accurately, we  
5       match your name and address against a public data  
6       source to make sure that you really are who you say  
7       you are. That helps us get out the Donald Ducks  
8       and the Roy Rogers and some people who like to play  
9       games, but we find the utilization of the public  
10      compiled data, a very meaningful tool to ensure  
11      that our file is as accurate as it possibly can be.

12                MS. ALLISON BROWN: And can you just  
13      clarify what you mean when you say public sources  
14      of data and compiled sources of data? Can you be  
15      more specific?

16                MR. BILLINGSLEY: Well, I probably  
17      misspoke, I probably should have said compiled  
18      sources of data which originated from public  
19      sources of data. But it's a very effective way to  
20      make sure that data is accurate.

21                The other advantage that it holds for us is  
22      that we're very sensitive in not collecting data on  
23      children, and so by matching the name and a  
24      registration with an aggregator's data or a  
25      compiler's data, kids don't buy real estate

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1 property and cars and things of that nature.

2 MR. WHAM: You haven't met my brother.

3 MR. BILLINGSLEY: So, it gives us a

4 reasonable check to make sure that we're not

5 collecting data on children.

6 The other thing that we do to make sure

7 data is accurate is we use the DMA suppression

8 file, and we find that a very effective way to make

9 sure that we don't include data in marketing lists

10 to the people who have gone to the trouble to go to

11 DMA and sign up for either their direct mail

12 suppression file or telemarketing suppression file,

13 and a new product they started just a few months

14 ago which is an email suppression file.

15 So, that's another way to make sure that

16 the data we provide a marketer is accurate. And

17 the third way is the good old U.S. Post Office.

18 All marketers use the NCOA process, or should use

19 the NCOA process.

20 MS. ALLISON BROWN: And what does NCOA

21 stand for?

22 MR. BILLINGSLEY: National Change of

23 Address. And the way that basically works is if

24 you move and you fill out a card at the Post Office

25 so your mail will be forwarded to your new

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1       location, that information is collected by the Post  
2       Office, and the Post Office has this very large  
3       file of people who have relocated that's utilized  
4       to redirect their mail. And the Post Office  
5       authorizes some 20-something companies to take this  
6       data and do a match to make sure that if you have  
7       an old address in your file, and you match the old  
8       address, then you can substitute the new address.

9               And that's something that's been in  
10      existence for a long time, it's been used in the  
11      direct marketing world for a number of years. It's  
12      a very effective tool to make sure that if you're  
13      doing a direct mailing of a marketing list, that  
14      the marketing collateral that you're spending hard  
15      dollars for to be delivered by the Post Office is  
16      truly deliverable.

17               MS. ALLISON BROWN: Thanks.

18               Michael?

19               MR. PASHBY: Some information really has to  
20      be accurate. Some years ago I marketed a magazine,  
21      which I won't name, but, well, let's say a parents'  
22      magazine, and our primary source of readers were  
23      parents of newborn children.

24               We were extremely sensitive to the problems  
25      inherent in that. Somebody's buying lists of

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1 potential new births, and some births obviously are  
2 not live births, and you are mailing to people  
3 saying congratulations, and that can be extremely  
4 sensitive, obviously.

5 So, correcting data is very, very  
6 important. We spent an awful lot of time and  
7 energy making sure that the sources we were  
8 compiling that data from were accurate. If we  
9 found that there was an incidence of inaccuracy, we  
10 would cut off from that source. And we would not  
11 buy information from that source ever again.  
12 Because of the responsibility to the consumers that  
13 we had.

14 MS. ALLISON BROWN: And can you be a little  
15 more specific about what the sources of that type  
16 of data are?

17 MR. PASHBY: The sources of that data were  
18 from -- no, I can't, they were from compilers. It  
19 would come from doctors' office visits, from  
20 insurance companies, from a lot of different  
21 sources, I believe.

22 MS. ALLISON BROWN: And what did you do to  
23 make sure it was accurate? How did you gauge that?

24 MR. PASHBY: We would -- we would do it  
25 from the complaint level. That was the difficulty.

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1       You were doing it after the event, but if one found  
2       that there was a degree of inaccuracy there, then  
3       we would cut off from that source.

4                    MS. ALLISON BROWN: Ted?

5                    MR. WHAM: You talk about data quality  
6        issues, it's useful to look at it in two different  
7        ways. There's the quality of the data at the time  
8        that it's collected, and there can be errors  
9        introduced through typographical errors, or to  
10      purposeful, you know, fraudulence, Mickey Mouse and  
11      so forth, but there's also a more significant issue  
12      of data decay.

13                  Like if I, you know, show up in a database  
14      that I'm 25 to 34 years old, how old am I tomorrow?  
15      Okay? So, date range information is very  
16      inaccurate. Births, deaths, marital status and so  
17      forth, and people moving all the time, but we have  
18      a very mobile society. So, the statistic that I  
19      heard, I can't vouch, say, for this, but the  
20      average data in a data base decayed at a rate of  
21      about one and a half percent per month, that was  
22      the inaccuracy that built up over time.

23                  The marketer has an absolute vested  
24      economic interest in making sure that that  
25      information is as accurate as possible. If it's

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1       inaccurate, they can't use it for the goal that  
2       they have. So the alignment of the market  
3       interest, the consumer's interest of having  
4       accurate information is absolutely, I mean,  
5       perfectly together.

6                    MS. ALLISON BROWN: We have time for one  
7       more comment and then we will go to questions from  
8       the audience.

9                    Betsy?

10                  MS. ELISABETH BROWN: One of the things  
11       that I wanted to talk about data accuracy is that  
12       from the Claritas standpoint, we've seen a lot of  
13       different types of data. We not only use Census  
14       data and other public domain data, consumer  
15       surveys, which is really self-reported demographic  
16       information, but in order to -- as I was talking  
17       about implementing, in order to actually implement  
18       an actual marketing program, we will take our  
19       segmentation codes and place them on list files,  
20       such as Acxiom, InfoUSA, Experian and Equifax, and  
21       many other compiled lists.

22                  What we have found many times, especially  
23       when we're using the types of models that I  
24       discussed earlier that go down to a more specific  
25       household level, in terms of the demographic

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1       variables that we say are predictive of the  
2       behavior that we're trying to help our customers  
3       use, what we find sometimes is that these list  
4       sources have, I guess, decay, some other  
5       information, missing information, fill-in models,  
6       and we will show them that the data that we have  
7       proves out that their list is not really  
8       distributing the way the U.S. population  
9       distributes down to a low level of geography, a zip  
10      code, a census tract, a block group.

11           So that we can take a look at a list of  
12      data out there and say you're reporting that only  
13      two percent are in the income category, 50,000  
14      plus, and we expect to see more like 27 percent.

15           So, we have actually created models that  
16      help some of these list sources to improve their  
17      models, their income models or whatever that might  
18      be, to base them more on sort of a benchmark of  
19      data.

20           So, there's a lot of -- it's sort of a  
21      symbiotic relationship, back and forth with  
22      Claritas and the list providers, sometimes they  
23      actually do change some of their model information  
24      on their file based on our information, and other  
25      times we just use it to assign what we think is a

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1 more appropriate segment code, then they don't  
2 necessarily change that source of data, it depends  
3 on how they prioritize their models, and they  
4 prioritize their input sources.

5 MS. ALLISON BROWN: And I believe that  
6 Claritas also updates Census data, how do you do  
7 that?

8 MS. ELISABETH BROWN: On an annual basis.

9 We update census data, again, from a list of a lot  
10 of sources, some of the postal information, some of  
11 the moving information, NCOA. There's a lot of  
12 intercensal data that is produced that's not  
13 produced on 100 percent factor.

14 In other words, there are many, many  
15 counties, communities and states that do many  
16 updates of data and information, and we take really  
17 whatever we can get that's available and utilize  
18 that data. There are also many models that we have  
19 perfected over time, and we've been doing this,  
20 this is our third census that we've been actually  
21 updating information where we just do projections  
22 and straight line information based on other data.

23 So, there are many sources that we can use,  
24 both census-type sources that we think we can have  
25 a high degree, feel that we have a high degree of

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1       accuracy in terms -- and relevance, and some of the  
2       consumer survey research that's out there just  
3       allows you to take a look at shifting data in terms  
4       of how people are self reporting where their  
5       incomes are.

6               And in addition, we do use a lot of the  
7       list data just to try to get a handle on which  
8       areas are growing. Postal drop rates, I think ADVO  
9       counts, which is another list source where they  
10      constantly are updating where the postal drops are  
11      going.

12               MS. ALLISON BROWN: One thing that becomes  
13      clear pretty quickly is how integrated the  
14      aggregators are with the sources and how the data  
15      sort of rotate in and out of the different  
16      databases.

17               I know when I open up the discussion for  
18      questions from the audience, if you have a question  
19      you would like to ask, please raise your hand and I  
20      will recognize you after one of our staffers comes  
21      over with the wireless microphone. Please speak  
22      into the microphone while asking your question and  
23      state your name and organization before you begin  
24      your question so the court reporters can get an  
25      accurate transcript of today's proceedings.

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1                   MR. CATLETT: Thank you, I'm Jason Catlett  
2                   from Junkbusters. I have a question for Mr.  
3                   Billingsley. I have an advertisement in a trade  
4                   magazine from Naviant, it's quite amusing, it shows  
5                   a biker with tattoos and a beard, and it makes  
6                   light of the fact that he likes roses, and when  
7                   you're going online, you might want to -- I infer  
8                   from this advertisement -- you might want to pitch  
9                   a banner advertisement for roses.

10                  Could you please tell us the process by  
11                  which when this biker goes online and visits a  
12                  website the website would know that he likes roses?

13                  MR. BILLINGSLEY: Well, I'll talk a little  
14                  bit more about that this afternoon, if you would  
15                  like, because we'll talk about how the data is used  
16                  to administer marketing programs, but basically, we  
17                  would have business relationships with some of the  
18                  ad serving companies that collect data anonymously.

19                  We would pass data attributes to those ad  
20                  serving companies anonymously, so that they could  
21                  then target a banner ad that was appropriate for  
22                  that particular person, without ever knowing the  
23                  person's name.

24                  MR. CATLETT: Thank you.

25                  MS. ALLISON BROWN: Don't forget to say

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1       your name and affiliation for the record.

2                    MR. HENDRICKS: Thank you, Evan Hendricks,  
3       Privacy Times. I had one question, but first I  
4       wanted to follow up on what you said about the  
5       babies, because we always wondered about that, a  
6       lot of us.

7                    So, is it the doctor's offices would sell  
8       that information, or the insurance companies were  
9       some of the sources for people who are about to  
10      have babies?

11                  MR. PASHBY: I am not absolutely certain, I  
12      believe that was, and this was some time ago.

13                  MR. HENDRICKS: But I also wanted to  
14      comment, hospitals and birthing classes, and do  
15      they sell it to a compiler, is that how it would  
16      work?

17                  MR. PASHBY: It's my belief that that's how  
18      the information was compiled.

19                  MR. HENDRICKS: Okay. The other thing is  
20      you said that the magazines, I think correctly, are  
21      at the front end of this process, much more so than  
22      some of the others who are at the back end, and in  
23      the UK, on a subscription form, the little cards  
24      that you get in your magazine, you have a check-off  
25      box, it says if you don't want your name shared,

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1       check here, and send it in with your subscription,  
2       and one of the big problems in the U.S. is that at  
3       the point of the collection of data from  
4       individuals, people are not notified what could  
5       happen or given the chance to even opt out.

6               And so, do you think that makes sense from  
7       a data practices point of view, and do you think  
8       that your association is ready to sort of endorse  
9       that and recommend it, you know, considering the  
10      growing strong feelings about privacy?

11              MR. PASHBY: I think from the standpoint of  
12       having to fill in, check a box on a card, what we  
13       found in any promotional activity, having the  
14       consumer take actions in a promotional activity  
15       reduces the response. Therefore, we have cards  
16       which are prechecked, and yes I want this magazine,  
17       and then all they have to do is tear the card out  
18       and put it in the mail.

19              But as I mentioned, we also do publish in  
20       the magazine the privacy policies and the ability  
21       to -- and the ability to call an 800 number or send  
22       to the magazine fulfillment house to be taken off  
23       the list.

24              MR. HENDRICKS: And of course what I'm  
25       describing wouldn't even, I mean someone could

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1 still take the card and just throw it in the mail.  
2 It's only those people that took the time to look  
3 and see that there was a check-off box, and could  
4 check off they didn't want their name sold.

5 So, what I'm saying is would it interfere  
6 with, you know, with what you're saying? I mean,  
7 it wouldn't require the individual to check the box  
8 to say I don't want my name sold, it would only be  
9 for those individuals that cared enough. And if  
10 this is practice -- am I confusing you? You look  
11 like you're not following me.

12 MR. PASHBY: I'm saying that any time there  
13 is -- you give people the option in a promotion,  
14 the response declines. And as we mentioned before,  
15 the whole use of information has been more  
16 effective and more efficient when we are spending  
17 or when businesses are spending 65 cents to a  
18 dollar to put a piece of promotion into the mail  
19 and you're getting single digit responses, you're  
20 trying to be as efficient as possible.

21 MS. ALLISON BROWN: Ted, do you want to  
22 comment on that?

23 MR. WHAM: Yeah, I absolutely would. The  
24 basic fundamental question is if I -- if consumer X  
25 chooses to do business with Business Y, should

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1 consumer X have the opportunity to say Business Y,  
2 don't contact me. That's question A.

3 And question B is, Business Y, don't  
4 share my information with company Z and Z sub  
5 one and Z sub two and so forth. I fundamentally  
6 reject the notion that a consumer should be able  
7 to say I want to do business with a particular  
8 company Y, but that company can't follow on and  
9 make money out of that relationship. I think  
10 that that has terribly negative consequences  
11 for the efficiency of economic transactions in  
12 this country.

13 The reason we don't have mom and pop stores  
14 in the United States very successfully anymore and  
15 the reason we have Wal-Marts in this country is  
16 because they provided a very economically efficient  
17 way of delivering low-priced goods in the United  
18 States, for better or for worse, but the wheels of  
19 that continue to turn by having the businesses be  
20 able to use that information in the most effective  
21 way possible.

22 MS. ALLISON BROWN: We are trying to stay  
23 on a factual level here and stay away from policy  
24 discussions.

25 MR. WHAM: I couldn't help myself.

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1                   MS. ALLISON BROWN: Does anybody else have  
2 a question?

3                   MR. DIXON: Tim Dixon from Baker McKenzie.  
4 A question, just to pick up on that point to take  
5 it a little bit further. When we talked,  
6 particularly when you mentioned the 30 million  
7 permissioned people or households in the database  
8 that you've got, what proportion do you know is  
9 that people who have done the sort of check box as  
10 opposed to the kind of I guess you could call it  
11 permission by inertia where they would need to read  
12 a privacy policy and then go through an active  
13 process of say opting out if they wished to opt  
14 out?

15                  MR. BILLINGSLEY: I don't know the  
16 percentage. We use in collecting the data, and  
17 this is primarily a decision that's made between us  
18 and the client that we're providing registration  
19 services for, we use three different kinds of  
20 permissioning processes. I'll try to get through  
21 this without confusing myself and the audience, but  
22 we use the opt-in process, which we define as a  
23 permissioning question with either yes or no, not  
24 preselected.

25                  We also use the opt-out permissioning

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1 process, which is a permission question with  
2 yes preselected, and in certain situations,  
3 not a lot, we use the explicit process, which  
4 basically is a bold statement that says, Do  
5 not provide us your marketing information unless  
6 you're willing to receive, you know, marketing  
7 offers.

8 So, we utilize all three of those,  
9 depending upon the circumstance. We do flag how  
10 the permissioning process worked for that  
11 particular consumer, and we are sensitive based  
12 on the permissioning process, how that  
13 information is used when it is -- when a  
14 marketing program is generated based on that  
15 permissioning.

16 But the percentage, I don't know the number  
17 to be very specific about your question.

18 MS. WOODWARD: My name is Gwendolyn Woodard  
19 with Worldwide Educational Consultants. I'm  
20 consumer A, and I decide that I'm going to attend a  
21 conference, so I go online and complete the form.  
22 The site that I'm going to complete the form on has  
23 a third party advertising network associated with  
24 it, okay? As I complete the form, I notice in the  
25 URL the information that I put in the form is

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1 reflected up there.

2 So, as a consumer, how would I know how  
3 that information is going to be used, what  
4 databases will it be going to, especially if this  
5 third party advertising network uses a push and  
6 pull technology to disseminate that information to  
7 different databases?

8 MS. ALLISON BROWN: Does anybody want to  
9 take that on?

10 MR. WHAM: It's very useful if you're  
11 omniscient.

12 MR. BILLINGSLEY: I'll respond a little  
13 more. The --

14 MR. WHAM: Comprehensively, perhaps.

15 MR. BILLINGSLEY: Yeah. The way it should  
16 work, in my opinion, is if you're in that kind of  
17 situation where a redirect is occurring, without  
18 your knowledge, then the privacy policy should be  
19 very explicit in saying -- in discussing the  
20 redirect to another website, why that is occurring,  
21 what your choices are to either participate in that  
22 or not participate in that. And disclosure, in my  
23 opinion, is the key for the consumer in  
24 understanding what is or is not happening to  
25 their data, particularly when you see it in the

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1 URL.

2 MS. ALLISON BROWN: And let me just say  
3 that that's really a question that should be  
4 directed to network advertisers, and none of the  
5 panelists up here represent any network  
6 advertisers, and it's really a separate issue that  
7 we're not addressing today. But, you know, that's  
8 a question for other people.

9 We are running out of time. Paula, did you  
10 want to comment on that issue?

11 MS. BRUENING: No, thanks.

12 MS. ALLISON BROWN: So, I think we are  
13 going to break for lunch now, and we would like to  
14 see everybody back at 1:00, and I want to thank the  
15 panelists for a very informative discussion. We  
16 really learned a lot.

17 (Applause.)

18 (Whereupon, at 11:30 a.m., a lunch recess  
19 was taken.)

20

21

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1 AFTERNOON SESSION

2 - - - - -

3

## 4 SESSION 3: WHAT ARE THE BUSINESS PURPOSES FOR 5 MERGING AND EXCHANGING CONSUMER DATA?

6

7 MARTHA LANDESBERG, Attorney, FTC, Moderator

8

## 9 PANELISTS:

10

11 MARTY ABRAMS, Executive Director, Center for  
12 Information Policy Leadership

13 JOHNNY ANDERSON, Chief Executive Officer, Hot Data,  
14 Inc.

15 C. WIN BILLINGSLEY, Chief Privacy Officer, Naviant,  
16 Inc.

17 JERRY CERASALE, Senior Vice President, Government  
18 Affairs, Direct Marketing Association

19 PETER CORRAO, Chief Executive Officer, Cogit  
20 Corporation

21 LYNN WUNDERMAN, President/Chief Executive Officer,  
22 I-Behavior, Inc.

23

24

25

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1

SESSION THREE

2

WHAT ARE THE BUSINESS PURPOSES FOR MERGING  
AND EXCHANGING CONSUMER DATA

4

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5

MS. LANDESBERG: If everyone would please  
take a seat, we would like to get started. We have  
a very full afternoon.

8

Good afternoon. My name is Martha  
Landesberg. I'm an attorney in the Division of  
Financial Practices here at the Federal Trade  
Commission. Let me just state, before we get  
going, we have a couple of announcements to make.  
I want to reiterate for everyone our ground rules.

14

We request that you turn off your cell  
phones, please. Once again we are going to very  
gently but firmly hold our speakers to the time  
limits we've discussed with them. My colleague,  
Allison Brown, will be your timer. She's right  
here, so just look for a sign from her that you're  
coming toward the end of your time, if you would.

21

We will as time permits again have a  
question and answer session. I'll ask again that  
you please identify yourself for the court  
reporters before asking your question.

25

And finally, the record of the workshop

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1       will be open until April 13 for submission of any  
2       comments or materials you want the Commission to  
3       consider, and we invite you to participate in that  
4       process.

5                   And also a fond welcome for those of you  
6       listening on the audiocast. We apologize and  
7       understand there was some trouble this morning. We  
8       hope things are up and running, and we're happy to  
9       have you with us.

10                  One last comment, Michael Pashby in our  
11       prior panel has submitted a written statement  
12       regarding his comments on the use of medical  
13       records to identify new prospects, and that  
14       statement, as others, will be posted in the  
15       workshop record for everyone to have a look at and  
16       comment upon.

17                  Now, it's my pleasure to begin session 3 of  
18       our workshop, and this is where we really get to  
19       the meat and potatoes of what it is that businesses  
20       do with all the information we've been hearing  
21       about all morning, and what we're going to do here  
22       is have presentations from each of our panelists  
23       one by one. I'll introduce them one at a time, and  
24       we'll take it from there, and as time permits have  
25       some questions too.

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1                   We'll begin with Marty Abrams. Marty is  
2                   the Executive Director of the Center for  
3                   Information Policy and leadership at Hunton &  
4                   Williams. Before joining Hunton & Williams Mr.  
5                   Abrams, or Marty, spent 12 years as Experian  
6                   leading their information policy and privacy  
7                   efforts.

8                   Marty?

9                   MR. ABRAMS: Thank you very much. As we go  
10                  through this technical process of keying up my  
11                  presentation, I would first like to thank the FTC  
12                  staff for inviting me here this afternoon, and I  
13                  would also like to thank them for the excellent  
14                  program this morning. I found it incredibly  
15                  worthwhile and very informative, and hopefully we,  
16                  this afternoon, can be just as informative.

17                  And we are talking about the uses and  
18                  purposes for third-party data, and I think that the  
19                  best place to start with understanding third-party  
20                  data is understanding that it matches with in-house  
21                  data, and it begins with the in-house data because  
22                  that's what marketers begin with, their own  
23                  customer base, understanding their own customer  
24                  base.

25                  And that data comes from multiple sources.

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1       The most important of those sources is directly  
2       from their customer, and the second is their  
3       relationship with their customer, and this is the  
4       majority of the data that the organizations,  
5       marketers, have in their databases and their files.

6               And to understand that data, to make the  
7       best use of that data, they have to match that up  
8       with third-party data, and I'm going to be talking  
9       about purposes and not processes. I have  
10      colleagues on this panel who I think are going to  
11      get more into the processes, but I would like to  
12      really put the emphasis on why the data is used.

13               And there's a paper that really goes in to  
14       how this works that was released yesterday by the  
15       Privacy Leadership Initiative and ISEC Council of  
16       the DMA, and that paper is available on the DMA web  
17       site I believe.

18               The first process, the first purpose, the  
19       first reason for using third-party data is just to  
20       make sure that your file is clean. 20 percent of  
21       the American population moves each year. People  
22       use variations of their names. They use variations  
23       of spellings of their name. I'm Marty Abrams. I'm  
24       Martin Abrams. I'm Martin E. Abrams. I've lived  
25       in California. I've lived in Ohio. I've lived in

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1 Texas. I sometimes buy from my office.

2 So one of the purposes is to merge all of  
3 those Marty Abrams that are sitting on a company's  
4 file into one Marty Abrams so that I can market  
5 that to me in a unified fashion.

6 The second is to have a deliverable  
7 address. We often have multiple addresses,  
8 multiple variations of our addresses. We  
9 abbreviate our address. We move, and one of the  
10 purposes of using third-party data is to put that  
11 data together to have an address that is  
12 deliverable.

13 And having a deliverable address means that  
14 you can deliver up to 15 percent more of the mail  
15 that you mail on a regular basis, and that has  
16 really cost implications for an organization.

17 The second purpose is to truly understand  
18 your own customers, and I think Lynn Wunderman did  
19 a great job of describing that this morning.  
20 You're trying to understand what is similar about  
21 your customers and what is different, and one of  
22 the ways you do that is overlay your file with  
23 demographic information from a third-party.

24 Examples of the type of data that you might  
25 overlay is age because age is very predictive of

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1       where you are in your life-style, what you might  
2       buy and also inferred or modeled income, and again  
3       we have no exact income on any files other than the  
4       IRS's files, and those, of course, are not  
5       available, so we model income to be able to try to  
6       figure out how individuals are similar or  
7       different.

8               And that information helps us understand  
9       who to market to, how to market to them, what type  
10      of products we should offer them in the future. We  
11      begin to understand what is predictive of who's a  
12      buyer and what is just really a red herring, not  
13      very predictive.

14               And then based on what we understand about  
15      our own customers, we can go out in to the  
16      marketplace and find individuals who are very  
17      similar to our own customers, folks who have very  
18      similar demographics, very similar psychographics,  
19      so we can begin to build our customer base with new  
20      customers who are similar to the folks that we are  
21      marketing to at the moment.

22               And those sources include competitors,  
23      because organizations do exchange lists,  
24      noncompetitive marketers, and lastly aggregators or  
25      compilers, organizations that put together files of

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1 individuals for other organizations to use who  
2 create mailing lists, and the results are more  
3 effective communication with existing customers.

4 We can put together the right message for  
5 the right consumer at the right time to maximize  
6 that relationship with the customer.

7 We also find prospects who we have the  
8 greatest probability of reaching, folks who are  
9 most similar to our existing customers, and more  
10 important, in this modern age, is we begin to  
11 understand how our customers are changing so we can  
12 begin to develop the products and services that are  
13 responsive to where our customers are going over  
14 time.

15 Martha asked me to talk a little about the  
16 differences between marketers and aggregators in  
17 terms of the type of data they have and the type of  
18 processes. When you think about marketers, the  
19 folks who actually market to you and I, first their  
20 data primarily comes from their own customers.

21 Even if I overlay with data from third  
22 parties, if I'm a marketer, most of the data I have  
23 is from my own customers. Most of that data is  
24 either self reported, I give you my name and  
25 address, I volunteer information with you, or comes

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1       from my own experiences with you as a customer.

2               And lastly, I as a marketer typically have  
3       regular contact with my customer and can  
4       communicate with you as my customer about both what  
5       I'm selling and my processes and the choices that  
6       you have.

7               Aggregators have data on a broader  
8       population. Some aggregators have most of the U.S.  
9       population. The data comes from many, many  
10      sources. As we discussed, some of them are public  
11      record sources. Some of them are surveys. Some of  
12      them are purchase data, but the data comes from  
13      many sources, not a single source.

14               Typically the data that is held by an  
15       aggregator is not experiential data. It tends to  
16       be demographic or psychographic data, and, last,  
17       typically the aggregator does not have regular  
18       contact with the customer, the consumer, but rather  
19       relies on the party that collected the data to have  
20       had that contact with the consumer, and most  
21       aggregators build systems to make sure they only  
22       get data from reliable sources.

23               Thank you very much.

24               (Applause.)

25               MS. LANDESBERG: Thank you, Marty.

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1                   Next we'll hear from Win Billingsley, the  
2                   Chief Privacy Officer of Naviant. Win?

3                   MR. BILLINGSLEY: As we talked this  
4                   morning, Naviant's key value that they bring to the  
5                   marketplace is that we provide a database of  
6                   consumers that are Internet enabled, and we sort of  
7                   phrase our mission statement as Naviant is a  
8                   leading provider of integrated, precision marketing  
9                   tools for online and offline environments, so we  
10                  can send marketing messages or marketing campaigns  
11                  to consumers either through direct mail or through  
12                  Email or through banner ads, so we work in both of  
13                  those worlds and actually try to integrate those  
14                  two worlds together.

15                  So we enable marketers to reach and build  
16                  relationships with online consumers, and that's  
17                  really Naviant's key sole business purpose.

18                  It's always tough to get a business model  
19                  on one slide, so I tried to simplify this as much  
20                  as I possibly can but still make it meaningful for  
21                  you, and for Naviant the world begins with  
22                  electronic registrations.

23                  We work with manufacturers that build  
24                  computer hardware, computer software, and we  
25                  facilitate the registering of their products and

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1       services via the Internet. Most of that data, once  
2       it's captured, is passed back to the original  
3       manufacturer. We keep the name and address and  
4       designate a flag that this individual, since they  
5       registered their product or service via the  
6       Internet, is an Internet enabled household.

7           So the data point for us begins with the  
8       name and address and an Internet household. That  
9       begins the database processing, and there's data  
10      hygiene work that's applied to that database. I  
11      talked about it a little bit this morning. We use  
12      the compiler's information to make sure the names  
13      that we have are accurate in our database.

14           We also append to that from the compilers  
15      various data attributes that enrich the data and  
16      make it meaningful and store and maintain the data.  
17      We also use the DMA's file suppression list to make  
18      sure that no one is in our database that has  
19      expressed an interest not to be.

20           And I should have mentioned back in the  
21      registration process that there is a permissioning  
22      process that we go through before you ever really  
23      enter into this diagram.

24           So once the data is there with an  
25      enrichment of data attributes, then we have the

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1       ability to deliver this data for marketing purposes  
2       in a variety of channels in a variety of ways, so  
3       the data can be used to administer direct mail or  
4       Email campaigns. It be used to deliver direct mail  
5       campaigns, telemarketing and targeted banner ads.

6               And we analyze the data to determine counts  
7       based on criteria. A client will come to Naviant  
8       and say, I'm looking for these kind of people, tell  
9       me how many you have in your database so we can  
10      analyze the data and determine how many people we  
11      have that fulfills that particular requirement, so  
12      that in essence is Naviant's business model.

13               Now, why do we do all this? What purpose  
14       does it serve the business community? There are  
15       many. I've just noted three here that I thought  
16       might be meaningful to you.

17               One is we provide the data back to the  
18       registration client with the enhancement of the  
19       data attributes that we've associated so the  
20       registration client has some view of who is buying  
21       their products and services.

22               That's very important to the manufacturer  
23       to know that because they -- since they distribute  
24       through some intermediary, they are not in direct  
25       contact with their customers.

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1                   So we would provide that back to the  
2 registration client, and the registration client  
3 would say, Gee, we have this kind of person buying  
4 this model of computer, how can we find more of  
5 those kinds of customers and launch marketing  
6 campaigns to increase and enhance our business. So  
7 that's the way a registration client would tend to  
8 use this data is to find more like customers.

9                   Another way they would use the data is say,  
10 This particular product is being bought by  
11 individuals that have these demographic  
12 characteristics, so how can we fine tune our  
13 advertising so that we are visible, more visible to  
14 individuals with these kind of characteristics, so  
15 it's used for a variety of purposes by a  
16 registration client in order to improve the  
17 efficiency of their marketing effort.

18                   Another example would be a bank. Banks  
19 love to promote their Internet banking packages and  
20 capability because they can provide enhanced  
21 service to their customers at a reduced cost for  
22 those of us who sign up for Internet banking.

23                   So a bank will come to Naviant and say, We  
24 really would like to promote our Internet banking  
25 capability, but we have a problem, we have no idea

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1       in our customer base who is on the Internet and who  
2       is not on the Internet, and really rather than do a  
3       mass mailing to all of our customers, we would like  
4       to do some selection.

5                   So they would come to Naviant and say, If  
6       we give you a list of our customers, can you match  
7       those names against the names in your database and  
8       tell us which ones of those are Internet enabled,  
9       and we provide that service.

10                  And then the bank can then target or  
11       deliver a marketing campaign only to those  
12       customers who are Internet enabled, and they might  
13       even refine that further. They might refine it by  
14       an age group or income level, but the primary key  
15       for the bank, if they're promoting their Internet  
16       banking package, is to only target to those that  
17       can actually use that product or service.

18                  A third example would be a retail dot com.  
19       A retail dot com wants to drive traffic to their  
20       web site, and you know you can always buy a  
21       billboard on Highway 1 or you can by an ad for the  
22       Super Bowl, but what they would want to do is to  
23       work with Naviant looking for a particular type of  
24       customer or individual that meets the selection  
25       criteria and then do a direct mail campaign to

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1       those customers with some kind of marketing offer  
2       that would drive them to their web site so they  
3       could offer a product or service.

4               Thank you.

5               MS. LANDESBERG: Thanks very much, Win.

6       Our next speaker is Peter Corrao. Peter is the CEO  
7       of Cogit Corporation. Before joining Cogit.com, he  
8       was Division President of National Accounts  
9       Marketing for ADVO and the owner and operator of  
10      Sports USA.

11              Peter?

12             MR. CORRAO: Well, thank you very much for  
13       inviting me here today. Even though I come from  
14       one of the largest direct marketing firms in the  
15       country in ADVO, my comments today will mostly be  
16       related to online marketing and its applications.

17             So I would like to talk to you today about  
18       the developing science of visitor relationship  
19       management and how it's applied on the web.

20             Before I do that, though, let me tell you a  
21       little bit about the dilemma in commerce today on  
22       the Internet. My company, like many other dot  
23       coms, is a highly capitalized, venture capitalized  
24       company. We've taken around \$50 million in  
25       investment to date and have yet to turn a profit

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1 with our company. We look similar to others that  
2 are out there.

3 The Internet commerce dilemma can be  
4 summarized pretty much on the slide that I've shown  
5 you here. There's two ways in a B-to-C environment  
6 that companies are making money or trying to make  
7 money on businesses on the Internet today.

8 One is content sites, and they're heavily  
9 required or exclusively required, excuse me, to  
10 bring advertising in, so their model is all about  
11 advertising. They deliver free content to  
12 consumers. They put advertising up for sale. They  
13 sell that advertising, and their business model is  
14 developed around that.

15 The other side of that is the commerce  
16 sites, who are the E-tailers or retailers that are  
17 trying to sell their goods and services online, and  
18 theirs is a simpler model in that they're trying to  
19 gather customers, turn those customers into  
20 repeatable revenue.

21 Here's the dilemma. The Internet today  
22 isn't very efficient, even with the tools that are  
23 being applied to it. Imagine that you bought  
24 133,000 banner ads, and you paid around \$15 a  
25 thousand for it, which would be the current going

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1       rate if you had a media buying firm dealing with  
2       either direct companies or with providers of those  
3       services.

4               Of those ads that you bought out there,  
5       around \$15 a thousand, you would have earned  
6       probably in the range of 300 visitors or so, so ads  
7       saying 300 visitors clicked through from those ads  
8       and came to your site to look.

9               Of those only five took action, so you're  
10      getting started with the 133. Now you're left with  
11      five that took action, and if they did take action,  
12      only 20 percent of those, or one, would return  
13      within the next year to buy anything from your site  
14      again.

15               So just think of it from its most simplest  
16      format -- and you're only dealing with the  
17      advertising and attention components of being an  
18      Internet company, your acquisition cost for a loyal  
19      customer in this model is \$2,000.

20               So the imperative here is that the Internet  
21      has got to learn to be better and more focused on  
22      how it brings -- on how it brings its clients in.

23               Let me show you a little bit about visitor  
24      relationship management and why it's important.  
25      Merchants want to increase desired action and get

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1       consumers to buy things and services from their  
2       site. Consumers want meaningful things to be shown  
3       to them.

4               Merchants again want to display relevant  
5       content to their customers. Consumers are  
6       demanding instantaneous and ever faster access to  
7       relevant content. Doing that is expensive.

8               Merchants want to optimize customer visits  
9       and generate sustainable profits. Consumers expect  
10      free Internet, other than access, or inexpensive  
11      services at significantly discounted prices often.  
12      We think that visitor conversion is critical to  
13      making this model sustainable on the Internet.

14               What Cogit does is capture registration  
15       information, I'm giving an example of what we do  
16       here, with and amongst our customers. We match  
17       that registration information then to available  
18       data in the offline.

19               We have two data sources primarily. One is  
20       Equifax Corporation, which we use their own bulk  
21       data, and the other as of March 31 will be Claritas  
22       data, which will be entered in our file at the end  
23       of this month.

24               When that information is matched, we  
25       irreversibly discard any personally identifiable

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1 information that we found on the consumer, so if  
2 you registered by name, we get rid of the name,  
3 replace that with a random ID, and that random ID,  
4 we can't go backwards and reengineer to find out  
5 who that consumer is.

6 We generate then an anonymous profile on  
7 that particular consumer, and then we allow our  
8 customers to, one, know who's visiting their site  
9 if they're not a customer yet, and, two, target  
10 them with relevant content that will then incent  
11 them to want to buy.

12 We think privacy is a big piece of doing  
13 this. Consequently our profiles are 100 percent  
14 anonymous. We think consumer PII shouldn't be  
15 stored and used for further personalization. We  
16 don't -- our visitors in the Cogit model are never  
17 tracked across sites, so we only know what you're  
18 doing on a specific site that you're dealing with.

19 Information from one client is never shared  
20 with another. Behavior information is  
21 never appended to our profiles, so the fact that  
22 you bought something on one of our customers' sites  
23 isn't appended to further your profile.

24 Clients aren't allowed to store Cogit's  
25 returned data, and we semiannually have our web

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1 site audited to validate that everything that we've  
2 got in our web site is, in fact -- in our policy  
3 is, in fact, what we do. Ernst & Young does that  
4 audit. We were the first cyber audit that they did  
5 and first audit attestation that they did.

6 So the notion is from a visitor  
7 relationship management standpoint or knowing who  
8 comes to your site so you can do something about  
9 it, we think that that's critical to being able to  
10 sustain the Internet commerce that's having trouble  
11 sustaining itself today.

12 We think that convenient and relevant  
13 information for consumers is what they demand and  
14 what they want. Most of that information is given  
15 to the consumer free today, although it's given  
16 free against a model that is not panning out from a  
17 general business model standpoint, and we think  
18 that there's an optimum balance between  
19 personalization and privacy.

20 We think we've come up with a method of  
21 doing that and one that doesn't offend the consumer  
22 and their ability to do it but yet does give the  
23 tools needed to the sites so that they can continue  
24 to make money in their commerce sites and/or money  
25 in their content sites.

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1 So thank you.

2 MS. LANDESBERG: Thank you, Peter. Our  
3 next speaker is Johnny Anderson, President and CEO  
4 of Hot Data doing double duty for us today.

5 MR. ANDERSON: Thanks, Martha. I wanted to  
6 take a second and kind of look at a higher level on  
7 how companies interact with customers and what are  
8 the analytic and customer relationship management  
9 applications that are driving a lot of the demand  
10 for third-party information.

11 This really depicts a pretty typical  
12 architecture of a CRM application that any marketer  
13 would use one or more components of. At the bottom  
14 what you see is customer touch points. That's how  
15 businesses will either get information from their  
16 customers and prospects or communicate with them.

17 So on the left-hand side you see kind of  
18 the outbound communications media that a business  
19 will use to communicate directly with the customer.  
20 This is not TV and radio ads and so forth, but  
21 they'll really use kind of Email, direct mail and  
22 maybe some telemarketing either from an in-house  
23 organization where they have their own telesales  
24 organization or a contracted organization.

25 And on the right, what you will see is

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1       really the way that people get information and then  
2       sometimes communicate with their customers, and  
3       that would be kiosks, which is kind of a new  
4       emerging way to communicate with customers. You're  
5       starting to see kiosks in, of all places, baseball  
6       parks where the San Diego Padres have a customer  
7       loyalty program.

8               And a customer puts in their preferences  
9       when they sign up for the customer loyalty program.  
10       When they visit the ball park they'll get the 10  
11       percent off coupon for a specific restaurant that  
12       happens to be in the area.

13               In-house or in-store communications, and  
14       we're now starting to see companies even like food  
15       chains implement customer loyalty programs where  
16       transactions are tracked so that customized offers  
17       and customized coupons can now be delivered to a  
18       specific consumer.

19               Call center being somebody is calling an  
20       800 number and talking to a customer service  
21       representative, either a sales rep or a support  
22       representative, and then obviously the web as one  
23       of the major ways that customers are getting  
24       information about products and services that a  
25       company may offer.

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1                   It is a web visit where they may fill out a  
2 form that says, "Send me more information," and so  
3 that companies are getting some explicit  
4 personalization type information that says, If I'm  
5 going to a dot com or another sports kind of web  
6 site, I'm going to check that I'm interested in  
7 golf, so send me some golf information.

8                   That's really stored in an operational data  
9 store that's used for day-to-day kind of activity.  
10 That's the data store that a CRM system may use so  
11 that sales reps and a call center get access to a  
12 customer record when an inbound call comes in.  
13 They may have some transaction information, maybe  
14 used for actually back-end processing where order  
15 fulfillment takes place, but it's the data store  
16 that's being used on a day-to-day basis.

17                  Some companies actually will have a  
18 separate data store that is used for data  
19 warehousing and the analytics, and that information  
20 is transferred back and forth with some  
21 synchronization, extraction, transforming and  
22 loading where a lot of information is both  
23 rationalized, and that is, Bill Smith is also  
24 William Smith and Bill Smith came in through the  
25 Web and William Smith called in on a call, and that

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1 information is rationalized.

2 And then the analytical tools at the top  
3 are the things that are really driving a lot of the  
4 marketing automation pieces, and that's things like  
5 campaign management. If I understand who my target  
6 audience is and who my best customers are, let me  
7 generate a campaign and plan that campaign and  
8 implement that campaign and then manage the results  
9 from that campaign.

10 RFM analysis has been talked about already.  
11 That's really understanding recency, frequency and  
12 monetary transactions on a per customer basis,  
13 really to understand who my best customer is, and  
14 then to clone that customer and find more that just  
15 look like them or be able to recognize them when  
16 one of those comes into one of my touch points.

17 Category management's driven from that, and  
18 that's really driving product synergies so if  
19 somebody buys a particular product, they know,  
20 through doing some category management analysis,  
21 retail analytics, that a customer is likely to  
22 purchase an additional product.

23 And then that starts to drive a lot of the  
24 tools that marketing managers use to understand  
25 their business, and those are things like data

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1       visualization, being able to look at customer maps  
2       for drive time analysis and trade area analysis;  
3       reporting, so aggregate reporting on a per product  
4       or per customer segment or per campaign  
5       performance, and then other kinds of data mining,  
6       being able to mine data that's transactional and  
7       maybe inventory management type applications and  
8       merging that kind of piece together.

9               Where Hot Data fits is really on the left  
10      side of the equation, and that is we provide a set  
11      of services that offer data quality and enhancement  
12      of those databases, whether that's an operational  
13      database or a data warehouse database.

14               The business models that are really in that  
15      kind of space, and not just Hot Data related but  
16      kind of industry wide, are really geared around  
17      four sets of services. Marty mentioned address  
18      data quality, and that's a big part, not only in  
19      the real world, but also on the electronic commerce  
20      side of being able to verify that an address is a  
21      deliverable address, that it is standardized to  
22      Post Office standards so I get a better postal  
23      rate, that I can manage the consumer's change of  
24      address, i.e., the 20 percent of consumers that  
25      move every year, that that can be tracked in a

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1 database, and then geo-coding addresses so that  
2 addresses can be looked at in terms of where people  
3 live.

4 Data rationalization and standardizing,  
5 that's understanding Bill Smith is William Smith.  
6 Consumer data enhancement is enhancement of  
7 demographic, psychographic, and business data  
8 enhancement. The flipside for us is that we also  
9 deal with business to business marketers.

10 In a broad sense this is the architecture  
11 that we use. We house consumer household  
12 information. We house carrier route information.  
13 We have services that house standardization, area  
14 code update changes and U.S. national change of  
15 address.

16 We provide customer data integration  
17 technology to our customer, to our customers who  
18 are contractually bound to the privacy use  
19 restrictions and viewing restrictions that we pass  
20 along to them, and that really from one click of a  
21 button they can profile a subset or their entire  
22 database and do things like address standardization  
23 and profiling.

24 This is kind of a bright real world example  
25 of what one of our customers uses, and they're

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1       really a wireless broadband provider that was  
2       really looking for -- to really target market. I'm  
3       sure a lot of DSL, everybody has probably got DSL  
4       things in the mail, and when I did, I went to try  
5       to sign up for it, and I was out of range, and I  
6       couldn't sign up.

7                   So they got me to respond, but they got me  
8       to be hostile because I was outside the range, so  
9       our customer really wanted to target people outside  
10      10,000 foot radius from a central office, and after  
11      having done some ideal customer profiling for them,  
12      identified who their target should be and who their  
13      ideal target should be in that particular  
14      environment.

15                  I am out of time, and the band's about to  
16      start playing, so I'm going to turn it back to  
17      Martha.

18                  MS. LANDESBERG: Thank you, Johnny. Our  
19      next speaker is Lynn Wunderman, CEO of I-Behavior,  
20      also serving two roles for us today.

21                  MS. WUNDERMAN: Actually, I don't know if  
22      it's true, but I heard a rumor here today that the  
23      real reason we've been asked to be here is that  
24      we're being auditioned for participants on a new TV  
25      game show. It's called "Database Marketing

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1       Survivor," you know the one where they put a bunch  
2       of database marketers in a room in Washington to  
3       talk about their business models. Last one  
4       standing wins a million dollars. Anybody else hear  
5       this? I think I probably better keep my day job.

6               Anyway, I'm here to talk to you today about  
7       a company called I-Behavior, and I founded this  
8       company with my father-in-law, Lester Wunderman,  
9       yes, there is a family relationship for those who  
10      have asked, and we created this company largely  
11      with the vision to bring a lot of the art and  
12      science of traditional direct marketing to the web  
13      and to new media.

14               Now, our formula is really very  
15      straightforward. Everything that we do, the way we  
16      manage data, the way we structure it, the way we  
17      analyze it, all the products that we create from  
18      data has its roots in a very simple but proven  
19      principle we've known for decades as traditional  
20      direct marketers. You've heard this theme a lot  
21      today. Past behavior is the single, strongest  
22      predictor of future behavior. It's no coincidence  
23      that our name is I-Behavior.

24               Now, we take for granted gaining access to  
25      behavioral information in direct mail. We can pick

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1 up the phone. We can call a list broker, and we  
2 can rent names from one of any 30,000 plus odd  
3 lists based on what people bought, when they bought  
4 it, how much they spent.

5 Can't do that today on the Internet. That  
6 type of behavioral information doesn't exist. We  
7 have interest categories. We have product  
8 registration data, but not that level of  
9 behavioral, experiential information.

10 Beyond that, what's been largely unexplored  
11 is the opportunity to target and understand  
12 consumers based on their multi-channel buying  
13 behavior. Even though we know that a merchant's  
14 multi-channel shoppers, the buyers, tend to be  
15 their best customers, in fact statistics show that  
16 they're worth an average of over 30 percent more  
17 than their single-channel counterparts, and we know  
18 that those customers that can master these tools  
19 will be the multi-channel winners of tomorrow.

20 So to fill this gap in the marketplace,  
21 we've created one of the first, if not some say the  
22 first, cooperative database that truly combines  
23 highly detailed, transactional information on and  
24 offline on known direct channel buyers.

25 Now, before anybody starts slingin arrows

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1 up here, I will tell you that there are significant  
2 privacy safeguards built into this product, but  
3 before I get to them, I want to make sure that  
4 everyone has an understanding of the business model  
5 so they have the context in which to evaluate them.

6 First of all, I mentioned earlier for those  
7 of you who are not familiar with the concept of a  
8 co-op database, it's created when marketers pool  
9 all their customer names and related buying  
10 behavior in order to gain access to names of  
11 qualified prospects as well as additional data on  
12 their current customers that would otherwise be  
13 unavailable in the marketplace by which to build  
14 their business.

15 Now, this is a proven business model in the  
16 offline catalog industry. I'm sure you're probably  
17 familiar with names of companies such as Abacus.  
18 Experian has a similar offline product catalog  
19 called Z-24.

20 The reason that these products are so  
21 successful is really two basic things; number 1,  
22 the superior performance of a list. The fact that  
23 all this rich behavioral information goes in to  
24 fuel the selections, they have significantly higher  
25 response rates than the average mailing list,

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1       outside mailing list, by which one would normally  
2       have the opportunity to do prospecting in the world  
3       today.

4               Secondly, in terms of their pricing, they  
5       are offered to members, and by the way only members  
6       have access to these names. You have to contribute  
7       in order to get data out. Members get access to  
8       these names at a preferred rate, virtually half the  
9       price of a standard vertical list today.

10              So what we're doing at I-Behavior is we're  
11       expanding this context so that beyond catalogers  
12       we're including publishers, E-tailers, club and  
13       continuity marketers, virtually anyone who does  
14       direct-channel marketing, and we're creating it in  
15       a way that's a true multi-channel vehicle so that  
16       you can target more efficiently the Email and  
17       postal mail today. Tomorrow it will incorporate  
18       wireless, interactive television and virtually all  
19       forms of addressable media.

20              Now, there are two reasons why marketers  
21       want to gain access to the data. The first and  
22       most obvious is prospecting, and certainly you can  
23       see by the way that we consolidate information  
24       across marketers, across channels, we have a much  
25       more complete portrait of these shoppers, their

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1 buying patterns and their value.

2 This thing is bigger, smarter than any  
3 single marketer could ever create on their own.

4 That's because when we take data in from a  
5 merchant, we get it down to each transaction, the  
6 entire shopping basket of a person's purchases so  
7 that we can collect all the rich recency,  
8 frequency, monetary value information we've been  
9 talking about earlier today as well as we also get  
10 one component that's generally not been available  
11 in co-op databases previously.

12 Instead of just giving to each marketer who  
13 participates, to all their transactions, some high  
14 level general category associated with the affinity  
15 for that particular property, we actually get item  
16 level data so that we know exact products down to  
17 the SKU level that an individual is buying, and I  
18 can tell you that that is incredibly powerful  
19 information from a predictive standpoint when  
20 you're looking for those subtle predictive patterns  
21 in the data for those kinds of tools that we were  
22 talking about earlier today.

23 Now, we have proprietary technology that  
24 allows us to create a common language across  
25 marketers that we can really leverage the value of

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1       this product level information. We also have  
2       proprietary technology that helps us link multiple  
3       Email addresses back to a single individual and  
4       optimize the match between the on-and the offline  
5       data, but I'm not here to talk to you about some of  
6       our competitive strengths. I really want to focus  
7       on the business model itself.

8               There are two key features that I think are  
9       inherent in the kinds of co-op you should be aware  
10       of. First of all, this is the only place on the  
11       Internet today where you are assured of not talking  
12       to your own customers as prospects. That's  
13       because, unlike in the traditional direct mail  
14       community where mailers are really familiar and  
15       comfortable with the process of sending their files  
16       to a compiler -- I'm sorry, to a reputable service  
17       bureau, I see I'm getting short on time here,  
18       whereby they can exchange their names, they can  
19       unduplicate them, you can suppress out your current  
20       customers, we already know who your customers are  
21       because we already have them in the database.

22               Secondly, it's a closed loop process so  
23       when we send an Email to someone about this  
24       product, they may read the Email. They may not  
25       respond to that particular communication, but if

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1       they remember the marketer and two or three weeks  
2       later they have a particular need, they go to the  
3       Web site and they buy, we would know about that,  
4       not because we're tracking anything in terms of  
5       cookies. I don't want to get anywhere near that,  
6       in terms of your surfing of the Web, but we know  
7       because the merchant sends us back their data.

8                   We match that back to our contact history.  
9       We get smarter about targeting you the next time  
10      around in the future, even if we don't get credit  
11      for that response, because we maintain a  
12      professional history on the file.

13                  Now, the fact that we maintain a promotion  
14      history is really of true benefit to both the  
15      consumer and to the merchant. First of all, it  
16      allows us to identify habitual non responders.  
17      That's very important. Don't want to keep mailing  
18      to people who don't want to purchase from you.

19                  Secondly, we keep tabs on any correlating  
20      between the volume of mail so we can look at your  
21      individual saturation rate and any negative  
22      correlation against response.

23                  Now, the second way that mailers want to  
24      gain access to this database is to be able to  
25      target their own and mine the value of their own

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1       customers. Now, we can do that to help them expand  
2       it into new categories, to reactivate lapsed  
3       buyers, to turn their offline buyers to more  
4       efficient online buyers.

5                   So, for example, if an apparel merchant  
6       comes and says, "We're expanding into swimwear,"  
7       and they may say, "I want to target everybody in  
8       own our file that has bought from us in the last  
9       12 months, who has bought swimwear from any other  
10      merchant in your database. We'll create a one time  
11      file, do a one time mailing. Anybody who responds  
12      to that mailing, they own the rights to that data.

13                  But we will not append any information  
14      permanently to that marketer's files, not an Email  
15      address, not a transaction because we don't have  
16      marketing rights, and there are privacy issues  
17      attached to that.

18                  What we will append on an ongoing basis are  
19      model scores. Remember from our discussion  
20      earlier, it's nothing more than a mathematical  
21      probability. I have a .8, you have a .4. I'm  
22      twice as likely to buy swimwear as you are. Even  
23      if we have the same score, you don't really know  
24      what it is in terms of personally identifiable  
25      information that got us there because it's a

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1 formula, and it's made up like a Chinese menu. I  
2 got there because of age and income. You're there  
3 because you just bought shoes over the Web and you  
4 have kids. We don't necessarily have the same  
5 profile.

6 I will also say that there's some other  
7 creative ways to use these tools. In fact you can  
8 use them to serve up dynamic content right on the  
9 Web site to register users.

10 Now, I promised you that we would talk  
11 about privacy, and I just want to say that in terms  
12 of the offline data, we follow the industry  
13 standard which is opt-out for direct mail  
14 solicitations. We're not looking to reinvent the  
15 wheel in direct marketing from that standpoint.  
16 All of our member companies actively notify the  
17 people who buy from them that they share data with  
18 trusted third-parties.

19 If they choose not to do that, they send a  
20 request to the merchant. That data comes back to  
21 us in one of their updates, and that information is  
22 removed in the course of our database build.

23 However, online is a different animal, and  
24 we know that people have different expectations  
25 from a privacy perspective online. We respect

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1       that. We've been extremely proactive on the  
2       privacy front going what we believe is really above  
3       and beyond today's best practices in industry  
4       standard.

5               First of all, this is a double opt-in  
6       database, so in other words, no consumer will be  
7       targeted for an Email communication unless they  
8       raised their hand, self selected, and said they  
9       actively agreed to participate. When they do, we  
10      allow them to tell us the maximum number of Emails  
11      that they're willing to receive in any time period.

12              We will not exceed that. We give them  
13      access and control to the aggregated level of  
14      information that we utilize for selections, so they  
15      can come in, request a copy of their profile. They  
16      can say, "Don't use this Email address, use that  
17      one. I know I bought sports equipment in the past;  
18      but you know what, that was just a gift, please  
19      don't send me any more sports offers." Obviously,  
20      they can opt-out at any point in time.

21              I will also tell you that we do not allow  
22      marketers to cherry-pick this file. They can not  
23      come in and say, We want people of this age and  
24      this income who bought these products in this time  
25      frame." Not online, because as far as we're

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1       concerned, anyone who would respond to that kind of  
2       an offer, you could attach that purchase history  
3       and that profile of the individual and you would be  
4       releasing personally identifiable information, and  
5       we don't think you should do that.

6                   So we work with the marketer to understand,  
7       What's the product you're selling, what's your  
8       price point, what's the promotional nature of your  
9       offer. We construct targeting tools, create a  
10      composite score, rank them on the database. All  
11      you know is these people had a score of .75 and  
12      above. That's nothing in terms of personally  
13      identifiable information.

14                  Finally, we do not release any of the data  
15      on this file to -- no addresses -- to anyone for  
16      any purpose beyond a reputable service bureau  
17      offline. They go seamlessly through our own  
18      service bureau online. They never get access to  
19      the data.

20                  I will also tell you that we took this  
21      concept into consumer research. We told them what  
22      kind of data we have, how it benefits them, what we  
23      do with it, what we don't do with it, and they were  
24      not only very positive about the concept, they  
25      actually embraced our privacy policies.

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1                   So, in summary, I just want to say that we  
2                   have a proven business model in terms of the  
3                   behavior-based co-op, which has been expanded to  
4                   meet the unique needs of multi-channel marketers.  
5                   We have superior technology and a level of data  
6                   that helps us generate superior behavior  
7                   predictions at a good value to our clients, and  
8                   we're doing it in a way that we believe respects  
9                   consumer privacy and is looking to set new  
10                   standards in that area.

11                   Thank you.

12                   MS. LANDESBERG: Thank you, Lynn. The last  
13                   speaker on our panel today is Jerry Cerasale,  
14                   Senior Vice President for Government Affairs at the  
15                   Direct Marketing Association. Jerry joined the DMA  
16                   in January 1995 and is in charge of the DMA's  
17                   contact with Congress, all federal agencies and  
18                   state and local governments, a very busy man.

19                   Thanks for being with us.

20                   MR. CERASALE: Thank you, Martha. Lynn,  
21                   just so you know, for this panel, I'm the last one  
22                   standing, so send the check.

23                   Before I get to my slides, I wanted to  
24                   just, first of all, thank the FTC for having me  
25                   here and for having this workshop.

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1                   I wanted to make three quick points. The  
2                   first is that the information that we're talking  
3                   about today is marketing information, information  
4                   that's used to send you a solicitation, an offer  
5                   for something. It's not being used to give you  
6                   employment or refuse employment or anything of that  
7                   sort or for insurance, whether or not you're  
8                   eligible for insurance and things like that.

9                   In particular as well, just to get on a  
10                  topic that was raised, DMA guidelines would also  
11                  say that information that comes from a doctor-  
12                  patient or medical provider-patient relationship  
13                  should be only on a consent basis, and that's  
14                  pretty well standard within the industry as far as  
15                  we know.

16                  Second, the information that you gather is  
17                  basically to send a solicitation about a particular  
18                  product, so it only goes once. It's a one-time use  
19                  that people use to try and find new, prospective  
20                  clients.

21                  And third is that, generally speaking, the  
22                  information doesn't go to the marketer. What you  
23                  receive is, the information goes to a service  
24                  bureau that is either sending out -- making phone  
25                  calls or sending out the mail pieces and then

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1       returned back to the -- it's not used again, so  
2       it's that kind of information that we're talking  
3       about.

4               Martha asked me to talk specifically about  
5       prospecting and why we do it and how is it used, so  
6       I wanted to use because of my -- to make it simple  
7       so I could understand it, use some hypotheticals,  
8       and if Allison gives me time, I'll go to some more  
9       specifics after the hypotheticals, depending how  
10      nice she is to me.

11              The first is the idea of a new company. I  
12      just started something, I have a brand new idea.  
13      Think about Marty's view when he had the list of  
14      what marketers have and what compilers have. He  
15      said marketers have information on their customers.

16              Well, I'm brand new. I haven't got  
17      anything. I have no customers, nothing. I have a  
18      new idea for a new golf club, so what am I going to  
19      do? And the other thing is I'm going to sell it  
20      over the Internet. That's what I want to try and  
21      do. So what do I do?

22              Well, I'm going to go to a golfing magazine  
23      likely and try and see if I can rent the list,  
24      because those are people I would assume would be  
25      interested in golf, and I'm going to use this list

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1 to mail it because I'm starting to find -- and  
2 we're starting to find that mail, snail mail is  
3 being used successfully to drive customers to Web  
4 sites to make sales.

5 We find that from our catalogers and so  
6 forth, that it is a very important piece tool in  
7 E-commerce or multi-channel marketing. So, this is  
8 what I want to do so.

9 So I go and get the golfing magazine list,  
10 and it's one million names, and that is  
11 outrageously expensive to send, so I can't do it,  
12 so I want to go -- I go to an information compiler,  
13 and I say, Look, I would like to have some more  
14 information from an information provider, I want to  
15 try and narrow this list down.

16 I think that maybe this piece would likely  
17 be best suitable for women. I think that it may be  
18 for women probably over 40 because it helps give  
19 distance, and if you really swing hard it messes up  
20 the way the ball goes, so I think that that's what  
21 I want, and I know that likely I think that it's  
22 expensive, higher income, let's see if I can get  
23 that from Census data.

24 I'm selling it over the net so I want to  
25 use Win's stuff to make sure they're Internet-

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1       enabled, and I think maybe five miles from a golf  
2       course. Let's just pick these out of the air.  
3       Maybe we can get these things, and it finally comes  
4       down to 500,000 pieces, people that I can send this  
5       to, and that's within my budget, and that's what  
6       I'm going to use, and that's how a marketer can try  
7       and prospect a new start-up business.

8               Without the information from third parties,  
9       I can't start. I cannot start a catalog. I cannot  
10      start driving people. I can try, put it up on a  
11      Web site, see if search engines get me some people,  
12      but that's not going to be a viable economic model.

13               Another idea for prospecting is a current  
14      marketeer looking for new customers. The idea I'm  
15      trying to use here, I'm selling books and probably  
16      I'm selling books online, I'm trying to use online  
17      and offline because this is supposed to be online  
18      and offline information so these are my examples.

19               And I know because I sell books that  
20      they're upper income, they're Internet-enabled and  
21      these people that purchase from me happen to be  
22      people who live more than 20 miles from a book  
23      store and more than a hundred miles from a discount  
24      book store, so that's my marketplace of my current  
25      set of customers.

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1                   40 percent of Americans never purchase  
2                   remotely. 60 percent of Americans do, so I want to  
3                   try and reach some new customers, so I'm going to  
4                   go and try to find information that matches that  
5                   market because it works for me today, and I'm going  
6                   to send a mail piece to them.

7                   I may in fact ask for a split on this test,  
8                   people who have purchased, those that were in the  
9                   60 percent piece of the pie, and those in the 40  
10                   percent that have never purchased, to try and see  
11                   if I can reach new customers differently through  
12                   this mail piece, and so I send it.

13                   This is what I want. This is the  
14                   information I asked for. The information provider  
15                   supplies a list to the letter shop I'm going to  
16                   use. They send it out. They make sure the current  
17                   customers are deleted. They use hopefully the DMA  
18                   mail preference list, and they prepare the pieces,  
19                   and they send them out.

20                   I never see the list. I only know someone  
21                   was on the list if in fact they come back and  
22                   purchase from me. Then I would know that they  
23                   responded, so that's the only way it happens, and  
24                   that's generally how you use prospecting data.  
25                   That's to try and find someone new. You know from

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1       past behavior or you have a guess, if you're brand  
2       new. You don't have any past behavior in your --  
3       on your product. You make a guess: We think this  
4       is what the market is for. That's how we use the  
5       prospecting.

6               Now, let me give you a couple of quick  
7       examples of real life things that have been  
8       testified, to the process has been in Congress, in  
9       testimony before Congress. One company is Grolier.  
10       It's no longer in existence. It's been bought out,  
11       but Grolier is a bookseller selling things remotely  
12       out of Danbury, Connecticut, and it basically sells  
13       to children, basically sold discounted Dr. Seuss  
14       books.

15               The market for this company was rural  
16       Americans who lived more than 50 miles from a book  
17       store, families that had young children and were  
18       low income. The only way for Grolier to find these  
19       people to give them books that their children can  
20       read or books that they could read to their  
21       children was to have information to find them, so  
22       it was necessary to have a free flow of  
23       information.

24               And marketers -- the other is stylists, an  
25       after-market automobile company that sells after-

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1 products for minivans, seat belts that can be  
2 adjusted better for children, back-up warnings on  
3 minivans, so their market, families that own  
4 minivans that have children that are outside of car  
5 seats, to try to give them an offer of some safety  
6 to add to their cars, and that's the market, and  
7 they needed the information to try and find it.

8 One of the things that I want to make sure  
9 that you also know, my time is now up, I did get  
10 through the two examples, thank you, I didn't get  
11 my million dollar check yet though, but the one  
12 thing that the DMA says, you have to tell people  
13 that you share information with third-parties and  
14 give them an opportunity to say "no."

15 And that's really the basis, that people  
16 who take the information and share with  
17 third-parties have to tell you that they do that,  
18 and to be a member of DMA you must do that.

19 Thank you for the time.

20 (Applause.)

21 MS. LANDESBERG: Well, we have just a very  
22 few minutes for questions from the audience. If  
23 you would raise your hand, and if do you have a  
24 question, we'll bring the mike to you.

25 MR. HENDRICKS: Two quick questions. Evan

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1       Hendricks, Privacy Times. In the offline world, a  
2       lot of times people want to know when they receive  
3       a mailing, "Where did you get my name?"

4               Aren't there a lot of instances where  
5       there's contractual language that prevents  
6       organizations from disclosing that? That's the  
7       first question.

8               And the second question is I assume that  
9       the 20 licensees of the NCOA sell new movers' lists  
10       which they're able to produce because of the data  
11       they get from NCOA, but do other companies also  
12       sell new movers' lists?

13              MR. ANDERSON: I'll answer the NCOA  
14       question, and one of the restrictions that we have  
15       from the USPS is that we specifically cannot  
16       generate new movers' list, so this is specifically  
17       -- our NCOA services are specifically for people  
18       that are in a database, but we will not, cannot  
19       contractually generate a new movers' list that can  
20       then be sent out to marketers that are interested  
21       in people that have just moved.

22              MR. HENDRICKS: How are they generated,  
23       where they're moving?

24              MR. ANDERSON: A lot of other different  
25       sources, but none of which come from the USPS.

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1                   MR. ABRAMS: In terms of the question  
2 about, "Where did you get my name?" Increasingly  
3 during the 12 years that I was with an information  
4 aggregator, the contractual arrangements that  
5 limited the ability of the marketer to say where  
6 the name came from began to disappear from the  
7 marketplace.

8                   And increasingly organizations are  
9 acquiring data from organizations that have given  
10 notice, and organizations that even if they say,  
11 "No, you can't tell them where the data came from"  
12 they say "Pass on the name to us and we will call  
13 the individual and let them know that we were the  
14 source."

15                   So while that was the norm ten years ago,  
16 that norm has been changing over time.

17                   MS. LANDESBURG: Jerry, did you have a  
18 comment?

19                   MR. CERASALE: I was going to just comment  
20 specifically on the NCOA because actually there is  
21 a contract, but no one can use that for marketing  
22 purposes. It's just to correct mailing lists, to  
23 increase the efficiency of the Postal Service, so I  
24 don't have a lot of those letters.

25                   MS. LANDESBURG: Other questions? All

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1       right, then. Seeing no more questions, I would  
2       like to thank our panelists for a wonderfully  
3       informative session.

4               Thank you. If I could ask you just to bear  
5       with us for a moment, we'll go straight into the  
6       next session -- so don't go anywhere.

7               (Discussion off the record.)

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1 SESSION 4: HOW DO MERGER AND EXCHANGE AFFECT  
2 CONSUMERS AND BUSINESSES?

3 JESSICA RICH, Assistant Director, Division of  
4 Financial Practices, FTC, Moderator

5

6 PANELISTS

7

8 FRED CATE, Professor of Law and Harry T. Ice  
9 Faculty Fellow, Indiana University School of Law

10 JASON CATLETT, President, Junkbusters Corporation

11 JERRY CERASALE, Senior Vice President, Government  
12 Affairs, Direct Marketing Association

13 MARY CULNAN, Slade Professor of Management and  
14 Information Technology, Bentley College

15 EVAN HENDRICKS, Editor/Publisher, Privacy Times

16 RICK LANE, Director, eCommerce and Internet  
17 Technology, U.S. Chamber of Commerce

18 GREGORY MILLER, Chief Privacy Officer and Vice  
19 President of Corporate Development, MEconomy, Inc.

20 BRIAN TRETICK, Principal, eRisk Solutions, Ernst &  
21 Young

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## 1 SESSION FOUR

2 HOW DO MERGER AND EXCHANGE AFFECT  
3 CONSUMERS AND BUSINESSES?

4 - - - - -

5 MS. RICH: Hello. If everyone can take  
6 your seats again, please. We're going to start  
7 this next panel. I'm Jessica Rich. I'm an  
8 Assistant Director in the Division of Financial  
9 Practices here at the FTC, and I'll be moderating  
10 this fourth panel, which will focus on the effects  
11 of merging and exchanging consumer data on both  
12 businesses and consumers.

13 In other words, how do consumers and  
14 businesses benefit from these practices and what  
15 concerns, if any, do these practices raise.

16 I think we've heard some references to the  
17 various ways in which people benefit or some of the  
18 concerns that people have, but we're trying to  
19 drill down and talk more specifically about this  
20 particular topic.

21 We have a great group of panelists for this  
22 session. We're going to start with brief  
23 statements from each of them, three minutes each,  
24 and we're going to hold everyone to that, but I  
25 don't want to be too -- everyone has been great

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1       about keeping to their time, so I probably don't  
2       have to lecture them too much.

3                   Then we'll have a discussion among the  
4       panelists so we can examine the issues in greater  
5       detail, and we'll hopefully have time for  
6       questions. I think for this panel questions are  
7       fairly important, so at about 3:15, if you're in --  
8       get ready to ask some questions if you're in this  
9       room, and if you're in one of the overflow rooms,  
10      please come up to the door here so we can give you  
11      a microphone to ask your question.

12                  I want to emphasize that this is a long  
13       panel, and it's easy to focus on a lot of different  
14       topics, but we really want to focus on the effects  
15       of the particular practices we're talking about  
16       today, which is the merger and exchange of consumer  
17       data, the effects on consumers and businesses, that  
18       specific topic.

19                  We're going to let our speakers go  
20       alphabetically. I think they may be seated  
21       alphabetically, and we're going to start with Fred  
22       Cate, and I'll introduce him. He's a professor of  
23       law and Harry T. Ice Faculty Fellow and Director of  
24       the Information Law and Commerce Institute at the  
25       Indiana University School of Law in Bloomington.

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1                   He also serves as senior counsel for  
2 information law with Ice Miller Legal and Business  
3 Advisors and is a visiting scholar at the American  
4 Enterprise Institute. He specializes in privacy  
5 and information law and appears regularly before  
6 various legislative committees and professional  
7 groups on these matters.

8                   Fred?

9                   MR. CATE: Great. Thank you very much, and  
10 thank you also for the opportunity to be here.

11                  I've tried all morning long to condense  
12 this to three minutes, and I think I've got it now,  
13 so let me just make two points. I'm just going to  
14 take up one of the questions that was asked, and  
15 that is the impact on consumers, and let me talk  
16 about just briefly two points.

17                  One of them is the use of information to  
18 overcome the obstacles of market size and distance  
19 to make it possible to deliver customer service,  
20 customized service and personalized service to  
21 customers, and there are many examples of this,  
22 such as better targeting of what is stocked in  
23 stores.

24                  We've already heard about better targeting  
25 of the type of mail or commercial offers that are

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1       sent into homes, more accurate decision-making  
2       about customers, about consumers who come seeking  
3       service, greater convenience for consumers in many  
4       ways all the way from having forms pre-filled in,  
5       one call service center being able to change your  
6       or address in multiple accounts with a single call,  
7       loyalty programs.

8               I think frequent traveler programs are  
9       something we almost all share in common at least in  
10      this room, or returning goods without a receipt.  
11      These are exactly the types of examples of, if you  
12      will, sort of overcoming the type of problem that  
13      large, diverse and particularly online markets  
14      pose.

15               The second, I think, set of examples of the  
16      real impact on consumers is where we see  
17      dramatically new and different types of benefits,  
18      and maybe the best example is lower cost, and this  
19      is one area in which there's been a fair amount of  
20      studies completed recently showing, for example,  
21      Mike Turner's study, a billion dollars in the  
22      retail apparel industry in cost reduction by the  
23      ability to use personalized information, Walter  
24      Kitchenman's study showing \$85 to 100 billion in  
25      annual savings in the mortgage credit market

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1 because of access to personalized information, the  
2 Staten and Barron Study showing \$150 billion  
3 annually in non mortgage credit, the Ernst & Young  
4 study, Ernst & Young will be speaking later, \$17  
5 billion a year focusing just on 30 percent of  
6 financial services companies.

7 The point is this consistent evidence from  
8 these studies about the way in which the use of  
9 personalized information saves consumers money, but  
10 there are other good examples, either dramatically  
11 new and different services, for example, the wider  
12 availability of products and goods and services.

13 I don't mean simply expanded access to  
14 credit, although we have studies clearly  
15 demonstrating that, but even the points made on the  
16 earlier panel about the way in which a business  
17 operates, the way in which AOL got started by  
18 sending out floppy disks to people who had  
19 computers (and identifying people who had computers  
20 of course was key to that strategy), and finally  
21 the more apt, rapid and efficient, more accurate  
22 fraud detection and prevention.

23 I think one thing that almost anyone who  
24 works in that field will say is that personalized  
25 information is the key to detecting and preventing

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1       fraud. If you don't have access to it, you'll lose  
2       one of those key tools.

3                    Thank you.

4                    MS. RICH: Next we have Jason Catlett.

5        He's President and Founder of Junkbusters  
6        Corporation, a computer scientist with a Ph.D. in  
7        data mining. Dr. Catlett has worked on issues  
8        relating to the interplay between technology,  
9        marketing and privacy at such places as AT&T, Bell  
10      Laboratories, the University of Sydney and various  
11      other academic settings.

12                  In addition to academic publications, Dr.  
13      Catlett has contributed articles to such  
14      publications as the Privacy Journal and Direct  
15      Marketing News.

16                  DR. CATLETT: Thanks very much, Jessica,  
17      and thanks again to the Commission for inviting me  
18      today.

19                  First let me put a concern to rest of Jerry  
20      and anyone who feels like they're on a survivor  
21      program, or Commissioner Swindle, that I'm not  
22      going to be posting any profiles of people. I did  
23      go through an exercise that you can read in the  
24      handout out there of asking people if they would be  
25      willing to have their profiles posted and then

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1       going to companies to actually see the profiles  
2       that the consenting data subjects have.

3                Unfortunately, though I have a number of  
4       volunteers, I have no company yet willing to place  
5       on the table before us a real profile, which I  
6       think is regrettable.

7                However, what I'm going to talk about today  
8       is not that. It's three points. First, let me  
9       state that Fred is absolutely right that the  
10      benefits of information processing are enormous.

11               Let's remember, however, that the  
12      overwhelming majority of those benefits come  
13      without personally identifying information.

14      Wal-Mart is an extremely good example. It's all  
15      about inventory and forecasting, and most of the  
16      benefits come without PII.

17               Where you do use personally identifying  
18      information, as Marty Abrams pointed out, the vast  
19      majority of that is about personal information that  
20      the business already has and not that it gets from  
21      third parties.

22               Now, turning to the question of whether  
23      direct mail actually reduces -- sorry, targeting  
24      that information reduces the amount of junk mail  
25      that people get, in fact it actually increases it.

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1       If you look at the historical trend from say 70  
2       billion direct mail pieces per year in the United  
3       States, it's been trending up as the technology has  
4       made targeting better and better.

5           We do see more offers that people respond  
6       to. This is true, but the typical response rate  
7       being in the low percentage figures as Michael  
8       said, that results in a lot more junk, and Jerry's  
9       example of the golf course magazine is a good one  
10      here because without the information, a lot of  
11      offers are uneconomical and would not be mailed.  
12      So the additional information causes more offers to  
13      be responded to, also causes more unwanted  
14      solicitations because the information isn't  
15      perfect.

16           Now, let me turn to some of the negative  
17      aspects of personal information. One that we  
18      haven't discussed yet, I think is important, goes  
19      under the name of dynamic pricing or price  
20      discrimination. The American public loathes the  
21      idea that the person sitting next to them is  
22      getting a lower price on the same goods that  
23      they're getting.

24           They loathe the idea that I'm getting a  
25      lower price than Fred is for example, and I think

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1       Amazon learned this to their distress when it came  
2       out that they were randomly, they said, pricing,  
3       and Amazon very quickly stated that they would  
4       never base price points on demographic information.  
5       They said they didn't really have click stream  
6       data. I would like to see a clarification on that.

7               I'll wrap up with my last point, which is  
8       the effect on non-participation. I would dearly  
9       love to see some figures that talked about the  
10      impact on participation of profiling, but we don't  
11      have those figures. We just have figures that  
12      Forester put out last year of \$12 billion lost in  
13      online commerce due to privacy concerns.

14               But those privacy concerns were not  
15      specified to the level of particular profiles where  
16      the people were concerned about SPAM, or about the  
17      actual nature of the profiles. We simply do not  
18      know.

19               I'll leave it at that.

20               MS. RICH: Great. Jerry Cerasale is next.  
21       He was just on the previous panel, but I'll remind  
22      you that he's Senior Vice President of Government  
23      Affairs at the Direct Marketing Association.

24               MR. CERASALE: On this panel, still looking  
25      for my million dollars, but whatever, I wanted to

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1 just take a look at that study of restriction of  
2 data that was released yesterday and just raise to  
3 you that it's a billion dollars in just the apparel  
4 area, but there's an additional study that's an  
5 overlay on it that says that the individuals -- the  
6 groups that purchase apparel remotely to a greater  
7 extent, a greater proportion than their density in  
8 the population, are rural Americans and  
9 economically disadvantaged intercity, the people  
10 who are not adequately served by brick and mortar  
11 retailers, the people who don't have other choices,  
12 who end up paying a disproportionate share of any  
13 restrictions, cost of restrictions on privacy.

14 Those who have the fewest choices are the  
15 ones who pay the most based on that study.

16 I want to add to what Fred had said. What  
17 we know is that the sharing of information helps  
18 reduce fraud. We've seen studies where fraud,  
19 credit card fraud over the net in Europe is twice  
20 as great as that in the United States. We can  
21 attribute that in part I guess because we're more  
22 honest than Europeans, but I'm not certain that  
23 that is the full case.

24 The real reason is that part of the  
25 restriction in Europe is you can't use information

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1       collected for purposes other than the specific  
2       reason that information was collected, so a billing  
3       address on a credit card cannot be used for  
4       anything other than billing.

5                   So that in the United States, if you're on  
6       the Internet or even on the phone, if you call or  
7       want to purchase a good and here's the credit card  
8       saying, I'm Jerry Cerasale, give them a credit card  
9       number, and it's being delivered to the billing  
10      address, that's fine.

11                  In Europe they can't check that. In the  
12      U.S. they can. If it's not going to the billing  
13      address, I'm sending it to my mother or ostensibly  
14      I'm sending it to my mother, they ask for the  
15      billing address. If I can't give them the billing  
16      address, then they figure it's probably not Jerry  
17      Cerasale, so it's an added thing for fraud  
18      prevention.

19                  So information flow is important from that  
20      score as well, giving benefits to people. There  
21      are an awful lot of jobs, low income jobs. It's  
22      interesting when you go on visits with senators and  
23      representatives that they want direct marketers to  
24      come with them to set up call centers, to set up  
25      warehouses and so forth in areas where there are

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1 economic downturn areas because they want to try to  
2 build them up.

3 These are jobs that can be part time.

4 People can be trained fairly readily, so those are  
5 advantages as well as choices to consumers. You  
6 also have employees and the efforts there in trying  
7 to do that.

8 It also allows for easy entry, easier entry  
9 for new businesses so that you can get greater  
10 competition. I do not have to build the store. I  
11 can be L.L. Bean in my basement getting a list of  
12 Maine hunters, Maine hunting licenses, out of state  
13 people, sell 15 shoes, have to repair 14 of them,  
14 but that's how I start a billion dollar business.

15 Those are the things that can happen and  
16 happen readily with the sharing of information.

17 Thanks.

18 MS. RICH: Next we have Mary Culnan. As we  
19 noted earlier, Mary is the Slade professor of  
20 Management and Information Technology at Bentley  
21 College in Waltham, Massachusetts, where she  
22 teaches and conducts research on information  
23 privacy.

24 MS. CULNAN: Thanks, Jessica. My point I  
25 would like to make in my three minutes is that fair

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1 information practices should apply to the merger  
2 and exchange of consumer data, that is to  
3 profiling, and it's not clear that it really does  
4 today.

5 One way I think to close the trust gap and  
6 the misunderstanding that Commissioner Swindle  
7 talked about this morning is through much greater  
8 transparency about how compilers and co-op  
9 databases acquire personal information and what  
10 they do with it.

11 There's some parallels here to the network  
12 advertising model where in fact consumers do not  
13 have a direct relationship with the compilers and  
14 the co-op databases, and they frequently don't know  
15 who these firms are, so if they wanted to contact  
16 them, they would not know how to start.

17 So what are some of the things that we  
18 need? We need much more notice where data are  
19 collected directly from consumers. I've never seen  
20 a notice that says, "We share your name with  
21 carefully selected companies or carefully selected  
22 third parties and one of America's largest data  
23 compilers."

24 And I think to the consumer in fact the  
25 idea of a carefully selected company, while in fact

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1       the information is being shared for marketing  
2       purposes, that is not the same thing to the  
3       consumer as you buy from L.L. Bean and you get a  
4       mailing from Eddie Bauer or something like that.

5           So I think that all the compilers should  
6       provide an easy way for people to opt-out, and  
7       there needs to be a better way for people to be  
8       pointed to the Web site or however the opt-out is  
9       handled, and I think the companies that enhance  
10      their customer databases should include this fact  
11      in their privacy notices just out of fairness.

12           There are a couple questions that need to  
13       be answered. What does opt-out mean for compiled  
14       databases? Does my personal information stay in  
15       the database? Is it still used for enhancement  
16       purposes, or does it just mean that my name is  
17       removed from the mailing list when people come to  
18       get a prospecting list and it is just gone?

19           Should consumers be able to have their  
20       personal information removed from a compiled  
21       database? And then, second, the always popular  
22       "What kind of access is appropriate?"

23           In conclusion, I think really there's a  
24       need to bring consumers into the loop. What I hear  
25       -- it strikes me a lot of it is "We know what's

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1       good for you" is kind of part paternalistic because  
2       most consumers are smart, and they make good  
3       choices in their own interest when they have  
4       information.

5               And I think access to personal information  
6       is not an entitlement just because people don't  
7       know about the compilers, and basically then they  
8       don't know about it.

9               Consumers do benefit a lot from compiling,  
10       and I think the marketing profession needs to  
11       develop some effective strategies to educate and  
12       communicate with consumers the benefits of  
13       profiling and that these benefits outweigh the  
14       risks, which also means that the people that hold  
15       these databases have to make sure that they have  
16       very good privacy policies in place and that they  
17       enforce them.

18               MS. RICH: Next we have Evan Hendricks.  
19       Evan is the Editor and Publisher of Privacy Times,  
20       a biweekly newsletter that reports on privacy and  
21       freedom of information law. He's also the author  
22       of several other publications on consumer privacy,  
23       including his book "Your Right to Privacy" and he's  
24       Chairman of the U.S. Privacy Council.

25               He regularly lectures on information policy

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1 issues in the U.S., Canada and Europe.

2 MR. HENDRICKS: Thank you, and thank you to  
3 the FTC for the hard work they've put into this and  
4 the opportunity.

5 In January I had the good fortune of  
6 hearing Commissioner Swindle speak not once but  
7 twice in different gatherings, and he said  
8 something that I strongly agree with.

9 He said that when we talk about this issue,  
10 we should not talk about it emotionally because it  
11 can be an emotional issue, and it doesn't really  
12 help. This is something we need really more light  
13 than heat, so I made a commitment to him that when  
14 I come before the FTC, I will not discuss this  
15 emotionally.

16 And then I started thinking about it this  
17 morning, and I started getting really mad because I  
18 love to talk about this emotionally, but I'm a man  
19 of my word, so I can't do that.

20 Seriously I think that we should speak  
21 about this in cool and analytical ways, and I  
22 think, first of all, there's a greater irony here,  
23 and one of the ironies is that the direct marketing  
24 industry was subsidized by the taxpayers. The  
25 direct marketing industry was able to get public

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1 records at low or no cost, which was a great way to  
2 start a business if you can get your primary source  
3 that makes your business possible paid for by  
4 taxpayers.

5 We've seen it -- and that's not such a bad  
6 thing. We've seen it with investment in computer  
7 chips by the Defense Department has led to the  
8 computer revolution, but let's recognize that as  
9 people speak against government regulation, what  
10 got them to a point where they can speak about  
11 that.

12 Second of all, I think already from today  
13 and all the years I've seen leading up to this, on  
14 the issue of warranty cards, I think there's enough  
15 evidence to justify an investigation of unfair and  
16 deceptive trade practices.

17 I think it's widely understood that  
18 consumers fill out warranty cards thinking that  
19 they need to do this for the warranty to be good,  
20 and in fact you do not need to fill out a warranty  
21 card for the warranty to be good.

22 The purpose of warranty cards is generally  
23 to collect information by database companies. It  
24 is then sold and used for other purposes, and  
25 warranty cards are one of the primary sources of

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1       unlisted phone numbers, which people are unable --  
2       companies are unable to buy from phone companies,  
3       but they can get them.

4               And I think it shows that people who pay  
5       extra for an unlisted phone number would not be  
6       giving their unlisted phone numbers if they knew  
7       that information was going to be sold on the open  
8       market, so I think we have a real problem there  
9       that deserves official attention.

10              I think another example -- since I only  
11       have three minutes, another example of something  
12       that cries out for concern is say a company like  
13       American Student Lists based in New York.  
14       Factually, for instance, they have over 12 million  
15       names of children ranging in age from 2 to 13 years  
16       representing PK through 8th grade. All names are  
17       selectable by age, birth date and heads of  
18       households, and approximately 25 million age birth  
19       through 17 compiled from numerous direct response  
20       sources selectable by age, birth date, head of  
21       household, income and geography.

22              Well, I doubt that most of the people in  
23       those categories or their parents really had a  
24       chance to exercise much in the way of notice and  
25       choice.

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1                   A third area of I think concern which now  
2                   -- finally the good thing about the workshop -- is  
3                   it is being described as a very routine process and  
4                   it has been for years, but that is not known to  
5                   consumers, is the idea of enhancing your database,  
6                   which really means by virtue of being a customer of  
7                   a bank or of an Internet provider or whatever,  
8                   because you're a customer, then they go to outside  
9                   sources of data and fatten their file on you  
10                  saying, This is what kind of car you drive, this is  
11                  what kind of home you own, this is your estimated  
12                  income, do you have children.

13                  And I think that there is again no notice,  
14                  awareness or education to consumers about what's  
15                  happening and certainly no rights for individuals  
16                  to do anything about it; and I think that is a very  
17                  significant privacy issue because if you join a  
18                  company, you know they're going to have information  
19                  on you as a customer, but when they merge  
20                  information, they're basically creating a whole new  
21                  file that you don't know about.

22                  I think also the whole issue of public  
23                  records, I think that in public records, it's a  
24                  difficult issue. As a FOIA advocate, I think there  
25                  should be public access to public records, but when

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1       it's personal data, I think we should apply the  
2       purpose test that we find in Fair Information  
3       Practices and that if it's a driving record, it can  
4       be accessed for driving purposes.

5           Well, if it's a voter record, and in answer  
6       to one of the earlier questions, Are there  
7       restrictions on public records, half the states  
8       have laws that say you cannot use voting records  
9       and the other half don't, but I think the idea is  
10      that if it will interfere with people's right to  
11      vote, if they're concerned that their information  
12      will be used for commercial purposes, that's the  
13      purpose of the privacy law there.

14           I think we have to apply that kind of  
15      purpose test where people can get access to a  
16      voter's list if they're doing a campaign. How do  
17      we do that? I think one way to do it is that I  
18      think we should have to certify to the record  
19      holder that you're using it for this purpose and  
20      then have a notice sent to the data subject so they  
21      know that someone has accessed their record.

22           That can be done either by postcard or  
23      electronically to reduce cost, but I think that's  
24      the direction we need to go to handle the public  
25      records issue.

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1                   My final point is that I think there's a  
2                   lot of important players missing at this workshop  
3                   starting with Acxiom, which has records on over a  
4                   hundred million Americans, something like 120  
5                   million Americans pulled from all sorts of sources.  
6                   I commend you to two articles in the Washington  
7                   Post that dealt with Acxiom over the last couple  
8                   years.

9                   I think a lot of hard work goes into  
10                  putting a workshop together like this all the way  
11                  up and down the Commission, and I think it's a  
12                  disservice to the Commission and the American  
13                  public if a major player like Acxiom and other  
14                  players like that don't participate to shed light  
15                  on what they do.

16                  Thank you.

17                  MS. RICH: Our next panelist is Rick Lane.  
18                  He's the director of E-Commerce and Internet  
19                  Technology for the U.S. Chamber of Commerce, where  
20                  he's responsible for coordinating the development  
21                  and implementation of the Chamber's E-commerce and  
22                  technology, legislative, and policy initiatives.

23                  Mr. Lane has served in leadership positions  
24                  on a variety of federal, state and local  
25                  commissions and committees, including the

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1       Montgomery County Cable and Communications Advisory  
2       Committee.

3                   Rick?

4                   MR. LANE: Thank you very much. I just  
5       have a quick question. How many people in the  
6       audience have started a small business, have  
7       started their own business?

8                   That's what this is all about. That's what  
9       we're talking about in the free flow of information  
10      and being able to have entrepreneurialism in this  
11      country.

12                  I started my own business called Cyber  
13      Sports. We spent a lot of money in development of  
14      a product, and basically what the product was was a  
15      database that college and university sports  
16      programs could use to help track the college  
17      recruits that they were recruiting through the  
18      recruiting process.

19                  In the old days they had paper files, and  
20      they had problems complying with NCAA requirements,  
21      but how did I get that product to market? It was  
22      easy for the most part to develop the product, but  
23      how did we target our audience? Our audience was  
24      college coaches.

25                  What we did was, first, we looked and

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1       thought, Well, we can call every college and  
2       university sports program in the country. I think  
3       there are about 5,000 colleges. We were four  
4       people. We couldn't afford to do that.

5                   So what we did was we found a list that was  
6       already available, that had information on all the  
7       college coaches in every sport across the country.  
8       It made our life easier. Then we got additional  
9       information from other sources that put on top of  
10      it the coaches win-loss records.

11                  So we saw those coaches that were losing  
12       would be a better potential market for our product  
13       than those that were winning because the ones who  
14       were winning figured, Hey, we already understand  
15       this game.

16                  And then on top of that, we took the  
17       information of size of school because what we found  
18       was the smaller the school, the more kids that they  
19       had to recruit because they didn't have name  
20       recognition.

21                  I have a nephew who is six-three, 215, the  
22       fastest kid on the team. He's not hard to find.  
23       He's going to be recruited by Michigan and Ohio  
24       State and other schools are going to find him and  
25       probably offer him a scholarship, but what about

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1       the kids who are in the smaller towns and how do we  
2       get information about them?

3                   Here's the next part of the process, which  
4       is people send information on college kids  
5       throughout the country into these coaches'  
6       databases which they search on grade point  
7       averages, height, weight, positions and they fill  
8       them.

9                   Now, what we're talking about is, Is that a  
10      bad thing? Is offering kids scholarships a bad  
11      endeavor? We have information, these college  
12      coaches, on thousands of kids based on public  
13      information through newspaper articles and so on  
14      and so forth.

15                  Yet they are using it to offer kids  
16      scholarships, and those of us who enjoy March  
17      Madness think, well, maybe it's not a bad idea at  
18      all, but what we found is the academic side of the  
19      colleges liked it because we were tracking grades  
20      and other information for the kids that were being  
21      sent in, but then other departments who were  
22      offering scholarships began using our software to  
23      offer kids scholarships for music and academic  
24      scholarships and drama and so on and so forth.

25                  So the information flow is critical. We

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1       looked at it in Acxiom, yes, big macro, large  
2       company, important to look at, but there are also a  
3       lot of smaller, targeted uses of information  
4       database and flow that is beneficial to the  
5       foundation of this economy and how we operate.

6                   So from our standpoint, we look at this  
7       issue from a small business perspective. Let's  
8       give small businesses the opportunity to grow and  
9       survive and to create competition in the markets  
10      unlike in the EU, and let's not arbitrarily just  
11      cut that information flow off.

12                  Thank you.

13                  MS. RICH: Greg Miller is Interim Chief  
14       Privacy Officer and Vice President of Corporate  
15       Development for MEconomy, an Internet privacy  
16       infrastructure venture. Before joining that  
17       company, Mr. Miller was Medicologic Netscape's  
18       chief Internet strategist of governmental affairs  
19       and a director of strategic marketing for Netscape.

20                  Mr. Miller has worked on issues involving  
21       technical Internet infrastructure, online marketing  
22       strategy, including personalization and data  
23       warehousing, and Internet security and privacy  
24       policy issues.

25                  Greg?

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1                   MR. MILLER: Thank you, and I want to thank  
2                   the Commission for inviting me to participate this  
3                   afternoon.

4                   Actually a little bit beyond MEconomy, I  
5                   have the privilege of being a venture capitalist,  
6                   not to be confused with capitalist, so MEconomy is  
7                   one of my portfolio companies.

8                   But in the process of doing that, I  
9                   facilitate the development of emerging security and  
10                   privacy companies in the digital economy and advise  
11                   up-starts on issues of consumer privacy and  
12                   information security, and two very different, yet  
13                   perhaps paradoxically complementary sectors of  
14                   digital entertainment and U.S. health care.

15                   I've been asked here today to participate  
16                   with my esteemed colleagues on an exploratory  
17                   discussion on the effects to business and consumers  
18                   of the merger and exchange of consumer information  
19                   and digital economy.

20                   And of potential applicability to this  
21                   discussion, I spent the last six months working  
22                   with a client start-up to engineer an inflow  
23                   mediation and user registration system that was  
24                   designed specifically to address required  
25                   consorting of offline and online consumer

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1 information for multiple sources in order to create  
2 the best possible user experience and online  
3 digital entertainment while simultaneously  
4 respecting the privacy of those subscribers.

5 Our solution, which we dubbed JOIN for  
6 "just opt-in," addressed many of the issues raised  
7 by this workshop, so the net of my work there, as  
8 it may contribute to today's discourse, can  
9 probably be summed up as follows: Over time the  
10 convergence, Consortium and brokering of personally  
11 identifiable information, or PII, we believe will  
12 require a balancing test between the needs of  
13 business and the needs of consumers, nothing too  
14 profound there.

15 And I can see the broken smiles of the  
16 lawyers among us. I call it YABT, "yet another  
17 balancing test," and thankfully for all of us I'm  
18 going to avoid going down that particular rat hole  
19 of jurisprudence.

20 But anyway, what we learned last year in  
21 this online music start-up was that consumers might  
22 not worry about privacy per se as much as they  
23 worry about surprises and uninvited interruptions,  
24 and apparently Seth Goddin this week concurs at  
25 least in part with that finding in the current

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1 issue of Red Herring Magazine.

2 So I submit that consumers simply want to  
3 be left alone and are not interested in being  
4 interrupted, unless they've agreed to such as part  
5 of the deal for receiving the information, product  
6 or service that they're seeking.

7 I also submit that the majority of  
8 businesses are not interested in snooping but  
9 simply selling more products and services. For  
10 business success in the digital economy means  
11 gathering information to improve the customer  
12 experience and relationship.

13 Compiling information on consumers from  
14 whatever source is legally available should be  
15 intended to improve the customer experience and  
16 nothing more, and this may mean not only sharing  
17 and consorting of PII, but synthesis of data into  
18 homogenized databases.

19 This can raise potential concerns. The  
20 ease with which PII can be extrapolated is  
21 improving -- it's proving really possible to be a  
22 very powerful thing and perhaps to one's detriment.

23 Witness Web M.D.'s move last week or the  
24 week before to rescind their contractual  
25 obligations to provide certain data to Quintiles,

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1       one of their supply chain trading partners, due to  
2       the technical wherewithal to ascertain an identity  
3       with only a date of birth and a postal code.

4               I submit there are demonstrative benefits  
5       to PII compilation and the downside in terms of  
6       consumers' lack of confidence in business to do the  
7       right thing or unwillingness to participate I think  
8       can be addressed through what we call permission  
9       based approaches to the data gathering use. Of  
10      course, consumers should be aware of the possible  
11      misuse of PII but also understand the cost benefit.

12               So through that work we also came to the  
13      conclusion that unless and until the incentives of  
14      business and consumers are matched in a manner that  
15      encourages and authorizes the compilation and usage  
16      of PII, something we're studying right now at  
17      MEconomy, this so-called digital economy we think  
18      may stall.

19               For the consumer the concern should  
20      probably run to security more than privacy as the  
21      real threat may lie in identity theft.  
22      Unfortunately we weren't able to find a lot of  
23      empirical evidence last year on the use or misuse  
24      of PII.

25               I think the digital economy is still fairly

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1 nascent, but I think prospectively industry should  
2 focus on the now well settled principles of notice,  
3 choice and access, and as they're equally important  
4 in the compilation of PII, we think the consumer  
5 should be notified of information gathering  
6 practices and policies whenever they're used in any  
7 service, online or not, and where appropriate or  
8 practical given the choice to participate in  
9 advance of such gathering.

10 We think the compiled PII by business  
11 should be accessible to the consumer's review, too,  
12 and we think applying these three principles with  
13 equal force and meaningful standards for each  
14 empowers the consumer to take an active role in  
15 protecting their own identity and its uses.

16 So as we grapple with the complex issues of  
17 the underlying and I think most valuable commodity  
18 of a digital economy, PII, I believe that notice,  
19 choice and access can serve as safeguards for over-  
20 reaching data collection, and I think that that  
21 would be the basis for my contributions today, if  
22 any, that are hopefully useful.

23 Thank you.

24 MS. RICH: Thanks. Lastly Brian Tretick is  
25 a principal with Ernst & Young, who works in the

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1       area of global privacy assurance and advisory  
2       services. He serves clients in the online  
3       financial services, retail and software industries  
4       focusing on the technological, organizational,  
5       regulatory and third-party relationship aspects of  
6       data privacy.

7               He also works in the firm's global privacy  
8       practice where he helps to provide various  
9       consolidated services, technical, advisory, and  
10       legal, to Ernst & Young's global clients. Brian?

11               MR. TRETICK: Thank you, Jessica. Prior to  
12       this panel, you heard from marketers, and I  
13       represent here the assurance industry.

14               I want to talk a little bit about what  
15       companies are doing, especially companies that hold  
16       on to marketing information, hold on to information  
17       about their customers, merge third-party  
18       information with that to get to know their  
19       customers better and perhaps then provide an avenue  
20       for other parties, their merchant partners,  
21       business partners, to reach the company's customers  
22       with those third-party messages.

23               First off, I would like to talk a little  
24       bit about the organizational issues, namely, the  
25       appointment of privacy officials, and these aren't

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1       the privacy officials, the celebrity CPOs that were  
2       appointed over the last year, year and a half.

3               These are people with a lot less glamor.

4       They have assurance, audit and compliance  
5       responsibilities, so what we're doing, we're seeing  
6       a push, an evolution of privacy and privacy  
7       responsibilities out of the PR, the business  
8       development type environments and down into the  
9       business.

10               We're seeing an emergence of the roles and  
11       responsibilities, the policies and procedures out  
12       of marketing groups for marketing data, although  
13       they need to keep executing those policies and  
14       procedures. There's someone with authority and  
15       accountability in companies who is much more,  
16       pardon the expression, humorless about the use of  
17       information because they're much more regimented  
18       and disciplined in their backgrounds.

19               So we're seeing those again  
20       accountabilities and authorities extending outside  
21       of the marketing arrangement, marketing groups, and  
22       into business development, into other compliance  
23       and auditing functions.

24               We're seeing the extension of security and  
25       controls, again not just on Web sites. All this

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1 data is back in enterprise systems and increasing  
2 technical, procedural controls in these situations,  
3 and also assurances where management needs to  
4 establish confidence among themselves that their  
5 technology groups, that their business development  
6 groups, customer service groups, marketing groups,  
7 sort of fulfillment groups, are all meeting these  
8 policies and procedures, these internal policies  
9 and procedures.

10 So they're seeking assurance internally and  
11 externally on these practices. They're providing  
12 training and awareness for their employees and  
13 third-party vendors on their policies, on their  
14 detailed practices, dos and don'ts, what they  
15 should and should not do regarding the use of  
16 collected data.

17 And they're also reregulating their  
18 dealings with third parties, with people who they  
19 receive information from and people who they  
20 provide information to, vetting them, selecting  
21 them carefully and doing due diligence and  
22 including specific terms of use in contracts with  
23 third parties and also then various verification  
24 and monitoring.

25 The final point here is that these

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1       companies are working again internally or with  
2       third parties to establish assurances that their  
3       controls are in place to prevent bad things from  
4       happening, to discourage bad things from happening,  
5       and to put controls in place to encourage the right  
6       things, the appropriate business practices to  
7       happen.

8                    Thank you.

9                    MS. RICH: Thanks to everybody for your  
10                    prepared statements.

11                  We thought it would be useful next to open  
12                  up the panel for a discussion of some of the issues  
13                  you touched on in your opening statements. Some of  
14                  you have identified ways in which consumers and  
15                  businesses benefit from the merger and exchange of  
16                  data, for example, better targeting of ads, lower  
17                  costs, better customer service, lowering end  
18                  barriers for start-up, other examples.

19                  I think it would be useful if the panelists  
20                  expanded on some of these points and had a chance  
21                  to comment on others' points that were made in this  
22                  area, and also if anybody has data to support or  
23                  even contradict the points they're making, if you  
24                  could mention it now, I think it would make for a  
25                  better discussion if there was any data and

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1 everyone could hear about it.

2 I guess Jason is putting his tent up, so he  
3 would like to start it off.

4 DR. CATLETT: Thanks very much. Let me  
5 talk about dynamic pricing a little. There's very  
6 little data on this because companies don't put out  
7 press releases saying, "We are able to gouge our  
8 customers to the extent of \$6 million."

9 However, I would point you to an article in  
10 Harvard Business Review last month that says that  
11 an unnamed consumer electronics store was able to  
12 differentiate between price sensitive consumers and  
13 price insensitive consumers who were in a hurry and  
14 to charge the more hurried customers a 20 percent  
15 premium over the more diligent shopper, so that's  
16 the only empirical data point that I have about  
17 dynamic pricing, an area that's shrouded in  
18 secrecy.

19 What could we possibly do about dynamic  
20 pricing? Well, there's a diversity of opinion  
21 about whether this is a good thing. The airline  
22 industry does differential pricing, not based on  
23 personal information, but whether, for example, you  
24 want to be home with your wife and children on  
25 Saturday night.

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1                   A benefit to rationing that, and I think  
2                   there's a diversity of opinion on whether dynamic  
3                   pricing is a good thing.

4                   What privacy protections are necessary in  
5                   that environment? I believe the appropriate one  
6                   here is that adopted in the EU's data directive  
7                   which gives the data subject not only the right to  
8                   see the base data on which the decisions are made,  
9                   but also to have an automated decision-making  
10                  process explained to him or her.

11                  So that, for example, if an E-commerce  
12                  merchant is charging Fred \$2 less for a paperback  
13                  book than it is charging me, then I can, in  
14                  principle, ask to have that decision-making process  
15                  explained to me, and then the merchant can say,  
16                  "Well, it's because of your past behavior in this  
17                  area," and then at least I have some understanding  
18                  on which to base my future behavior.

19                  MS. RICH: Is that Rick down there?

20                  MR. LANE: Yes. Just a couple points. On  
21                  the dynamic pricing issue, obviously that just puts  
22                  up red flags for us in terms of you're dictating  
23                  how businesses are going to charge particular  
24                  customers for particular items. Does it mean  
25                  dynamic pricing includes presenting certain

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1       customers with coupons that provide a 10 percent  
2       discount over maybe my neighbor who doesn't get  
3       that and based on my buying habits, and so that is  
4       obviously of concern.

5               Also market forces, if what happened at  
6       Amazon.com is accurate and all this brew-ha-ha  
7       erupted, obviously there is concern in the  
8       marketplace that reacted very quickly and swiftly  
9       that consumers weren't ready for that or did not  
10      appreciate that, and it stops, so there are market  
11      forces already out there.

12               Also the direct marketing that Jason put  
13      forth in his discussion about the increase in  
14      direct marketing over the course of time, well,  
15      yes, obviously there's been more mailings done.

16      There are more people in the country.

17               So, of course, you're going to have more  
18      mailings. There's more businesses. There's more  
19      small businesses, and we've had a dynamic growth  
20      over the past couple years. It's called economic  
21      growth. I thought it was a good thing.

22               So, yes, you're going to have more direct  
23      marketing out there, but the fact is you're getting  
24      less mail that's not of interest to you, and that's  
25      a critical point, and that's what this is all

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1 about.

2 DR. CATLETT: Could I respond to that  
3 quickly? There are several factors at work, the  
4 increase in population, the increase in the price  
5 of paper and the price of postage, which Jerry I  
6 guess constantly is working on, all work to cause  
7 the total number of solicitations to vary for a  
8 number of different areas.

9 But I think if you learn DM Math 101, you  
10 will find that more information means more total  
11 solicitations, more accepted solicitations, but  
12 also more unwanted solicitations.

13 And on the issue of dynamic pricing, I  
14 didn't seek to say that the Federal Trade  
15 Commission should stop dynamic pricing or stop a  
16 company from offering a coupon to a subset of its  
17 customers based on the Claritas Prism rating or  
18 whatever criterion.

19 I simply think that from the point of view  
20 of privacy and fair information practices, the  
21 consumer should have the right to see the  
22 information that that decision is being based on.  
23 The information may be incorrect, and they may be  
24 missing out on something that they might otherwise  
25 be entitled to, and the decision-making process

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1 should be transparent.

2 If there is a trust gap, and I agree with  
3 Commissioner Swindle and the many other speakers  
4 who have said that there is a trust gap here, the  
5 way to close that gap surely is greater  
6 transparency, to give the consumer the right to see  
7 what's going on and the right to delete it if they  
8 don't want it.

9 MS. RICH: Evan, you've been waiting  
10 patiently, calmly.

11 MR. HENDRICKS: And unemotionally too.

12 MR. RICH: Unemotionally, yes.

13 MR. HENDRICKS: Well, let's talk about  
14 small business. If you look -- I commend everyone  
15 to the latest study from Forrester. Jason cited  
16 one earlier in our Privacy Times. It's out on the  
17 table. We report on the latest Forrester which  
18 looks at wireless, how privacy is not only integral  
19 to wireless, but privacy is integral -- it's the  
20 core business issue, and that it has to be dealt  
21 with top to bottom or businesses will suffer.

22 And Forrester staff are not consumer  
23 advocates or political. They're just worried about  
24 their clients' bottom line, and I think it's a very  
25 important analysis.

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1                   Let's talk about small business. I mean,  
2 so much of being in business depends on your  
3 judgment as a businessman and what is your business  
4 model, and so sometimes you need information to  
5 make your business go, and sometimes you can  
6 configure your business so you don't need to rely  
7 on people's personal data.

8                   I started my small business in January  
9 1981, and I had \$3 in my pocket, and I've not  
10 borrowed money, and I'm still in small business  
11 and -- is the business you described still going?

12                   MR. LANE: It's the number 1 recruiting  
13 software in the country.

14                   MR. HENDRICKS: Excellent, excellent. So  
15 we like that, but I think the other thing that  
16 happened to be in the 1980s is when the federal  
17 agencies were making a lot of claims about computer  
18 matching and that computer matching -- when I  
19 wanted to match databases from different agencies  
20 to fight fraud, they would make these projections  
21 about how bad fraud was among federal agencies.

22                   And I was part of studies that actually  
23 drilled down and looked at the numbers, and we  
24 found that the costs and the fraud projections were  
25 completely specious. There was no basis in fact to

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1       them, and that they were just pulling numbers out  
2       of the air.

3                   So I look in today's Wall Street Journal,  
4       and I see that the cost of the 90 largest financial  
5       institutions will be \$17 billion for some sort of  
6       restrictions on sharing or selling customer  
7       information, and Fred is quoted as saying that the  
8       costs run into the trillions, so I look forward to  
9       looking at those numbers too.

10                  I'm very skeptical that these will hold up  
11       to objective analysis and that the one thing when  
12       you hear about Gramm Leach Bliley, notices will be  
13       going to customers by banks of information  
14       practices and privacy policy.

15                  But Gramm Leach Bliley, the provisions in  
16       there were -- that's what the banking lobby wanted.  
17       They got what they wanted in this bill, and the  
18       other proposals advocated by the consumer advocacy  
19       community were rejected.

20                  So this is a case where maybe they didn't  
21       think out long enough what really were the best  
22       privacy standards and the most cost efficient ones.

23                  MS. RICH: Fred?

24                  MR. CATE: Thank you very much. I think  
25       one of the points Evan makes, he raises one, and

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1       frankly this goes to something Jason said which  
2       might be worth following up on, several people have  
3       mentioned, and Evan just did then, the question of  
4       how many people don't engage in an activity because  
5       of privacy fears and trying to put numbers, and  
6       Forrester certainly tried to do that.

7           I think there's some reason to be a little  
8       skeptical of that, and I think Europe is the reason  
9       for that. Europe offers the most restrictive set  
10       of privacy laws we have on the books.

11           The polling data on reasons for staying  
12       offline is just as high as in the U.S., so in the  
13       presence of very high legal protection, you have a  
14       very high anxiety rate.

15           Moreover, something else we seem to know is  
16       that there's a certain disconnect here between what  
17       you want to be worried about and what you are  
18       worried about, that what we might perceive because  
19       we don't know, because we don't understand, and  
20       that this is also reflected frankly in a lot of  
21       these -- a lot of these numbers.

22           And if you read the whole survey you see  
23       what they were really talking about was something  
24       different. They were talking about security or  
25       they were talking about some specific issue, not

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1       the question of, Is this information going to be  
2       shared.

3               They're worried about, Is the information  
4       even going to get to the end point, but this  
5       reminds me -- this is my segue alert. This reminds  
6       me of Jason's point, which I think actually is  
7       excellent, dynamic pricing is an issue. If it's a  
8       problem, it's a problem that should be looked at as  
9       a phenomenon itself.

10              And if Commissioner Swindle can get me a  
11       cheaper fare home because I'm not going to be  
12       subject to the sort of pricing that the airlines  
13       use, I think that would be terrific.

14              Unfortunately, I guess jurisdiction doesn't extend  
15       there.

16              But it highlights the sort of need to focus  
17       on what is the use of the information that causes  
18       the problem; in other words, not what's the specter  
19       of uncertainty. What's the way in which you can  
20       sort of look across sort of all possible uses of  
21       information.

22              But if in fact there is a use of  
23       information, for example, we have all sorts of laws  
24       in this country prohibiting discrimination, that  
25       you would use information to discriminate in. We

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1       don't have nearly as many laws restricting the flow  
2       of that information. We have laws restricting the  
3       use of that information.

4               You cannot use it to discriminate in  
5       certain ways, housing, public accommodations and so  
6       forth, and so I think really both of these points  
7       highlight the importance of focusing on  
8       demonstrated behavior and real harms as opposed to  
9       sort of speculation and system wide regulation of  
10      information flows.

11              MS. RICH: Mary?

12              MS. CULNAN: This is another segue alert,  
13       but I think for the business people in the  
14       audience, I mean, one way to think about privacy,  
15       it's not really privacy, it's really disclosure.  
16       You want consumers to be comfortable disclosing  
17       information and allowing it to be used for  
18       marketing.

19              And there have been a couple of good Harris  
20       surveys that have looked at people's willingness to  
21       disclose. There was one done in 1997 so these were  
22       mostly computer geeks in the sample because at that  
23       time everybody wasn't on AOL like they are now.

24              But they asked some questions about, Have  
25       you ever either lied or not disclosed information

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1 to a Web site when they asked for it, and everybody  
2 knows the numbers. A huge number of people say,  
3 Yes, at some point I did do this.

4 So then they asked, Well, what if the Web  
5 site told you, gave you notice and choice, and a  
6 huge -- about half the people who did not disclose  
7 before or lied say, "Yeah, I'll disclose my  
8 information then," or if you already had a previous  
9 relationship with a firm, then a lot of people  
10 would disclose.

11 I think what it says is you've got to get  
12 at least notice and choice into the equation, and  
13 it does make people more comfortable.

14 Now, the other interesting side to this is  
15 there is still a clump of people that under any  
16 circumstances are still not comfortable disclosing,  
17 and the issue is, What is it that would make these  
18 people disclose or, in fact, is this just how  
19 marketing works, and there's a segment of people  
20 that don't want to do business online.

21 MS. RICH: Jason?

22 DR. CATLETT: Let me go from those  
23 habitual, non responders, who comprise  
24 approximately half of the United States, back to  
25 the dynamic pricing issue.

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1                   Rick said that market forces have corrected  
2                   that, and in the case of Amazon, I would feel a lot  
3                   more comfortable if Amazon disclosed the fact that  
4                   they were doing dynamic pricing. This was not the  
5                   case. It was discovered by someone who talked  
6                   about it on an Internet discussion group, and then  
7                   it went out to the media.

8                   So I think again the problem we have is a  
9                   lack of transparency here. If we want to  
10                  investigate the practice, we have a very difficult  
11                  time doing so, if we don't have a right of  
12                  consumers to see what information is being held  
13                  about them and how it is specifically being used in  
14                  their case.

15                  MS. RICH: Since we seem to be moving  
16                  partly into what effect this has on consumers, let  
17                  me just go back to a point made earlier, which is  
18                  if there are cost efficiencies and lower costs  
19                  generally from being able to share data, are any of  
20                  these cost efficiencies passed on to consumers?  
21                  Has anyone measured that or thought about that?  
22                  No.

23                  Another point I just wanted to go back to  
24                  before we move into effects on consumers completely  
25                  is I heard different statements being made about

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1       whether the number of solicitations is really  
2       reduced when you can share data and target more  
3       efficiently with some people saying that, Yes,  
4       people will get fewer solicitations and others  
5       saying, Well, they'll be targeted more.

6               Does anyone have any data on that or any  
7       information that would be useful in talking about  
8       that issue?

9               Evan?

10              MR. HENDRICKS: Well, in the credit cards,  
11       we do have data out, just in the last few months,  
12       showing that the response rate for pre approved  
13       credit card is plummeting, and I think that deals  
14       -- I mean, here's a situation where they're able to  
15       use credit bureau data, highly targeted, and it's  
16       just a question of the market is so saturated, and  
17       there's not much differentiation anymore among the  
18       credit card offers.

19              So I can't remember, someone told me it was  
20       .4 percent or something was the response rate, so  
21       the customer acquisition is going much higher, and  
22       that's many factors.

23              DR. CATLETT: They key point there is the  
24       number of credit card solicitations is going up.

25              MS. RICH: Jerry?

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1                   MR. CERASALE: The basic -- this isn't  
2 precise data, but the basic use of mail  
3 solicitation tends to be standard mail, although  
4 there are solicitations that go out first class,  
5 and standard mail growth is growing faster than the  
6 rest of the mail volume is growing, but  
7 significantly below what would be expected in  
8 the -- what was expected in the growing economy.

9                   The Postal Service is coming in and asking  
10 for new rates and so forth based on new market  
11 forces, so that the amount of total volume of  
12 standard mail is not growing, what would be  
13 expected in the economy.

14                   One of the things you can see has changed  
15 over time, however, is what used to be known as  
16 resident or occupant mail, that in standard mail  
17 the non resident, non occupant mail percentage of  
18 standard mail is growing, meaning that the  
19 targeting has increased. It's not just the  
20 saturation shock on hitting every house everywhere,  
21 even though those have the lowest postage rates  
22 offered by the Postal Service.

23                   So that type of data we have seen as well,  
24 and the solicitations also tend to follow a pattern  
25 of the economy, that if the economy turns down, you

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1 tend to get a significant increase in standard mail  
2 solicitations to try to drum up the business that's  
3 being lost, and that lags the drop in the economy  
4 about six months to nine months before that  
5 plummets down as it follows the economy.

6 So that's what's happening. You have an  
7 increase in targeted pieces, less saturation pieces  
8 going through the mail, but they are growing less  
9 rapidly than they have historically based upon  
10 what's happening in the economy.

11 DR. CATLETT: Jerry, could you just clarify  
12 that standard mail is what used to be called third  
13 class mail?

14 MR. CERASALE: Yes, that's what the Postal  
15 Service used to call third class mail. They now  
16 changed it to standard.

17 MS. RICH: Before we get too deep into  
18 consumers, I realize I left out the piece of -- we  
19 talked about the benefits for businesses of these  
20 practices.

21 Does Greg or Brian or anyone else want to  
22 talk about some of the downsides or the risks for  
23 businesses of these practices?

24 MR. MILLER: We both probably have  
25 interesting remarks to make about this, and just

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1       perhaps as a segue from the business side over to  
2       the consumer side, I want to speak to you a moment  
3       about infrastructure cost on the business side and  
4       then how that transitions over to consumers.

5               And I have two quick case points for you  
6       that would be great for you to comment on too, and  
7       I will start with health care, which is where I  
8       spent a lot of time in the medical records space,  
9       and what we were trying to do at Medicalogic was  
10       give to the consumer for the first time in history  
11       a secure, authorized access to their authentic  
12       medical history.

13               Well, it turns out that for most of us, our  
14       medical history is comprised of several records,  
15       our primary care physician and at least a couple of  
16       specialists, and so what we were trying to do was  
17       give a view port to that comprehensive medical  
18       history, and that required literally the opt-in of  
19       several physicians and the proactive relationship  
20       building that went on with the patient to encourage  
21       them to allow that.

22               That required a lot of infrastructure cost  
23       for us in the consorting and homogenizing of that  
24       data and creating the necessary safeguards to even  
25       create Chinese walls, if you will, between the

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1 dermatologist and the OB-GYN and the primary care  
2 physician, so there was a view port challenge  
3 there.

4 In the entertainment space, the most recent  
5 case, we had a very challenging one with -- another  
6 one of our panelists, Ted Wham and I worked  
7 together on a project in the music space, and the  
8 problem we had there was when you go buy music, you  
9 don't say to yourself, I've got to go get me one of  
10 those Sony records. You say, I want to go buy a  
11 Dave Matthews album.

12 You, the consumer, purchase by artist, but  
13 the music industry, by which I mean the five record  
14 labels that control 90 percent of the music that's  
15 distributed worldwide, have their view of the world  
16 on you.

17 So we literally had to engineer what we  
18 called a data escrow service to ensure that privacy  
19 policies across five labels actually reconciled  
20 with one another and then the JOIN, the just opt-in  
21 program, was the means by which we encouraged the  
22 consumer to get the experience that we're really  
23 looking for which was a unified locker service  
24 which allowed them to compile all music they've  
25 ever purchased across any label from any retailer

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1       in history into one homogenized database.

2               This really presented a lot of problems  
3       because all the labels jumped up immediately and  
4       said, Not on my watch are you going to be mixing my  
5       data with the data of Universal without my customer  
6       explicit opting in says BMG, so we literally had to  
7       create this membrane.

8               This produced some substantial costs, and I  
9       dare say it may have been the straw that broke the  
10       camel's back because unfortunately that company is  
11       now in receivership. They spent tons of money on  
12       infrastructure to build the data escrow service  
13       that would ensure the privacy policies of five  
14       labels were maintained and protected and then still  
15       get the subscriber, the consumer, opting in to  
16       participate.

17               And I think that put a lot of pressure on  
18       them from the standpoint of ensuring privacy as  
19       well as building infrastructure that would support  
20       and then shield them from a certain amount of  
21       liability which I think segues over to you.

22               MR. HENDRICKS: Also, Greg, wouldn't an FTC  
23       standard, a uniform standard solve that problem  
24       across those five Web sites?

25               MR. MILLER: I think to a certain extent

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1       that's possible, yeah, but it's interesting the  
2       challenge of being a lawyer, working with lawyers  
3       and their view of each of their privacy policies.

4                    MR. TRETICK: I think there are always some  
5       risks in the exchange of any valuable asset, both  
6       upstream and downstream from a marketing data  
7       provider to a marketing data consumer company.

8                    The providers are looking to make sure that  
9       the information that they provide is going to  
10      reputable and responsible parties and going to be  
11      used in reputable and responsible manners, that  
12      children's information that is being offered up  
13      about all these school kids and college kids isn't  
14      going out to market them, drugs, liquor, cigarettes  
15      to athletes, things like that upstream.

16                  Downstream is the same thing. We want to  
17      make sure that when we receive information it's  
18      coming from sources that got this data under again  
19      a reputable and responsible regime and that we can  
20      reach out and touch these customers and make sure  
21      then that they're not annoyed by our message, that  
22      the frequency of being able to be touched is  
23      reasonable, that the method of touching these  
24      customers is reasonable and responsible and  
25      appropriate for that.

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1                   So these are the risks that are faced both  
2                   upstream and downstream.

3                   MR. CERASALE: I think we're switching to  
4                   some risk to businesses. I think the first risk a  
5                   business has is they promise more than they can  
6                   deliver, so that you have to make sure that you  
7                   promise to do certain things and that you can and  
8                   will be able to do it.

9                   The risk -- the real risk you have, a  
10                  business has in sharing information is to become  
11                  complacent and sloppy. If you don't treat the  
12                  information that's given to you as part of a trust  
13                  relationship, ensure that you have safeguards to  
14                  keep the data secure, you want to make sure -- as  
15                  you just said, you want to make sure to whom data  
16                  is being shared, what type of procedures, what type  
17                  of marketing piece is going out.

18                  If you're just sharing data from one  
19                  marketer to another, you want to see what the  
20                  marketing piece is. You want to make sure if  
21                  you're -- for a one time use that the list is  
22                  seeded so you can see, to make sure the person you  
23                  dealt with actually does, in fact, live up to his,  
24                  her, its agreement they had with you.

25                  So that those -- and you have to train your

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1 employees as they work with -- we've seen that way  
2 back with -- an example that was publicly stated  
3 here with Metro Mail where on the 13th phone call,  
4 an untrained person gave information out. You have  
5 to make sure that you work that way because you can  
6 quickly lose consumer trust.

7 A 60 Minutes program, something like that,  
8 can destroy your business, so I think that that's a  
9 big downside for businesses.

10 The upside is that you can try and grow and  
11 expand and give people who don't have as many  
12 choices more choices and so forth, but you can, if  
13 you are reckless, totally destroy your business  
14 with some mistakes.

15 MS. RICH: I'll take Jason, and we'll move  
16 on.

17 DR. CATLETT: Thanks. Building on Jerry's  
18 point there, it's not any danger to the individual  
19 company. It's a danger to the collective trust by  
20 consumers of companies and the technologies.

21 I would refer you to another Harvard  
22 Business Review article by Susan Fornia called  
23 "Preventing the Premature Death of Relationship  
24 Marketing" in which she tells -- gives an example  
25 of a supermarket with a loyalty card that would

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1 send out personalized letters saying, You haven't  
2 bought X lately, why don't you come in and buy some  
3 more.

4 And of course, inevitably some woman became  
5 pregnant, and the company -- the supermarket sent  
6 out a solicitation saying, Why don't you come in  
7 and buy some more tampons.

8 There are a number of similar horror  
9 stories. We heard the miscarriage example this  
10 morning. We've heard the prison inmate sending the  
11 personal letter to Beverly Dennis.

12 It's very difficult to quantify the degree  
13 to which the average consumer is aware of these  
14 horror stories, but I think that the American  
15 public is largely aware that they have very few  
16 rights in these cases. The company takes a PR hit.  
17 They change supplier, but what about the individual  
18 whose data was used inappropriately?

19 And I submit that the American consumer,  
20 under current law in the U.S., has inadequate  
21 recourse.

22 MS. RICH: Well, in addition to these  
23 issues Jason has just raised about how consumers  
24 are affected, I think the main concern for  
25 consumers that I heard identified in the opening

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1 statements was whether the practices are  
2 transparent to consumers.

3 Mary, you're nodding. Would you like to  
4 expand on the points you raised earlier in the  
5 panel?

6 MS. CULNAN: I just don't think people know  
7 what's -- the average consumer knows what's going  
8 on, and then the problem is, and it exacerbates the  
9 trust gap, that people are surprised. Then they  
10 become unhappy.

11 And it's when -- wasn't what they were  
12 expecting, wasn't the bargain that they bought  
13 into, and so then they write to their members in  
14 Congress or they do whatever, there end up being  
15 stories in the newspaper, et cetera, and it causes  
16 a lot of problems for the collective business  
17 community.

18 One of the things I forgot to mention  
19 before too, the people who were sort of the least  
20 trusting and the more concerned about privacy and  
21 the least willing to disclose were also the ones  
22 who were most likely to favor legislation, so I  
23 think there's a take-away there.

24 I think the industry can do a lot to help  
25 educate people as they've done in other areas,

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1       online privacy, kids privacy. There were some  
2       terrific presentations at today's sessions. Why  
3       not put them up on the Web? Why not try to get  
4       people to go there?

5           I think the DMA can play a big role in  
6       terms of trying to push your members along to do  
7       better disclosures by putting -- changing the model  
8       disclosures in the compliance manuals to be more  
9       forthcoming about what is really happening to your  
10      information when it's shared or when you provide  
11      it. I think -- go ahead.

12           MS. RICH: Before we talk about this issue,  
13       could somebody, Jerry, Brian, somebody describe  
14       what kind of notice is being provided regarding  
15       these practices?

16           MR. CERASALE: I can start this at least.  
17       Notice has been provided by catalogers, for  
18       example, for an awful long time, and the notices  
19       generally -- I have a box of catalogs I was going  
20       to give Martha, I forgot to do it, I'll do it later  
21       now, that show on the order forms, basically is  
22       where they are, mailing, preference service  
23       information, so forth on how to, and they state  
24       basically that information is shared with third  
25       parties to send you -- to market to you offers that

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1       you might be interested in, and if you don't want  
2       that, either call this number or write to us here.

3                    MS. RICH: Does that encompass --

4                    MR. CERASALE: That's the notice that  
5        generally comes in the off -- I would say in the  
6        offline world.

7                    Online is a little different in the sense  
8        that there's more space. The real estate is fairly  
9        inexpensive, and some privacy policies are very  
10       lengthy, as some people have heard when they went  
11       to testify up on the Hill, a little bit too long,  
12       so they can -- some of them are a little bit more  
13       detailed in the offline world.

14                  Plus if you have a network advertiser on  
15        there, you have to add -- there's a whole slough of  
16       more notices that are required.

17                  MS. RICH: When you say the notice says we  
18        share with third-party, does that include sharing  
19       with compilers?

20                  MR. CERASALE: Yes, that's the way it is  
21        today, sharing with third parties for marketing  
22       purposes to send you offers, and it does say for  
23       marketing purposes, and that's where DMA requires  
24       it be for marketing purposes as well, but that  
25       would include that at this point, yes.

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1                   MS. RICH: Do the notices talk about  
2 bringing in data from third-party sources and to  
3 provide overlays or other enhancements?

4                   MR. CERASALE: Generally the examples I  
5 have with catalogers, they do not.

6                   MS. CULNAN: I would say, first of all, I  
7 think again saying you share for marketing  
8 purposes, most consumers understand that if you buy  
9 X, you get Y where Y is the same industry as X, but  
10 they don't understand compilers.

11                  Second thing -- and now I've forgotten what  
12 I was going to say.

13                  MS. RICH: We'll come back to you.

14                  MS. CULNAN: Oh, oh, oh. The enhancement  
15 thing, I have seen -- there was one excellent  
16 financial services notice about enhancement that  
17 basically said, We do profiling, we do data mining,  
18 we acquire third-party data, non credit report  
19 data, to understand how you use our card and we use  
20 this to serve you better, and they had an opt-out  
21 form right with the notice, and you could mail that  
22 back or call the 800 number.

23                  Unfortunately, with the Gramm Leach Bliley  
24 requirement, that doesn't cause companies to have  
25 to specify how they're going to use information,

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1 just what they collect and who they disclose it to.  
2 That very nice statement disappeared from the Gramm  
3 Leach Bliley notice that this company has sent out,  
4 which is now their de facto privacy notice.

5 So I think that's an issue that's probably  
6 not going to get Congress to act on it, but again  
7 more disclosure I think makes people more  
8 comfortable.

9 MS. RICH: Fred, were you going to address  
10 this point?

11 MR. CATE: Yes, and I have to say I am  
12 genuinely confused, and that is we talk a lot about  
13 transparency and that we all want transparency and  
14 we want more transparency, we want more disclosure.

15 On the other hand, we know as a statistical  
16 matter people don't read these, and therefore we're  
17 saying we're going to make ourselves feel better  
18 about privacy because we're going to mail a lot  
19 more notices to people so they can throw those  
20 away, but we can then say we've met disclosure  
21 obligations.

22 And what I wonder is if there isn't a  
23 better way, in other words, if there isn't a way to  
24 make -- to go back to that point.

25 I mean, two things that have been said.

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1       One is people don't want to be bothered, period. I  
2       think you could just stop there. It doesn't need  
3       to be qualified. They don't want to be bothered  
4       with privacy notices any more than they want to be  
5       bothered with anything else.

6               And if you want empirical evidence of that,  
7       just go home and set your own browser so it asks  
8       you every time you get a cookie and see how long  
9       you live under that system.

10              You just don't want to be bothered. I  
11       mean, it's that simple. You will set the default  
12       to accept all cookies or you will stop browsing on  
13       the Internet. I'm only describing 97 percent of  
14       the population. I know there are three of you out  
15       there who will be different.

16              So is there a better way to provide to get  
17       rid of the surprises, if you will, yet recognizing  
18       people really don't want to be sort of educated  
19       generally about this? I mean, as a professional  
20       educator, I know how hard it is to hold the  
21       attention of anybody at any time, but the idea of  
22       providing sort of a lesson on privacy at point of  
23       sale, it's a little easier maybe on the Internet.

24              But it also comes back to that problem of  
25       thinking specifically about when are we talking in

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1 a transaction and what is the impact on the  
2 consumer depending upon when that is?

3 At time of collection it's probably much  
4 easier, Why am I asking you for this information,  
5 here's why I'm asking, but that requires of course  
6 that we're only talking someone who is dealing  
7 directly with the consumer. We're not talking  
8 about any third-party activity there, and we're  
9 talking about they're going to anticipate all  
10 possible uses at that moment.

11 And of course remember that notice, if it's  
12 complete, will be criticized as being overly  
13 detailed, and if it is incomplete will be  
14 criticized as forming a contract that doesn't  
15 include all of its correct terms.

16 But what I worry about is the later use.  
17 Back to the AOL example, AOL decides it wants to  
18 start mailing disks to people's houses. It didn't  
19 have any dealings with any of those people. It had  
20 no chance to talk about consent with any of them.  
21 It can't mail them notices for consent because to  
22 do that, it would have to use the very information  
23 we want them to get consent before they use.

24 What are they to do, buy ads educating  
25 people, I'm a start-up business. You have \$3 in

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1       your pocket but you can buy an ad in the New York  
2       Times saying, let me educate you about something we  
3       know the public is not interested in generally  
4       being educated about?

5               I think it's a real conundrum that frankly  
6       none of us, and I'm certainly including me, have  
7       done a very good job getting at.

8               MS. RICH: Evan?

9               MR. HENDRICKS: That's why I brought up  
10       earlier, I think it has to be case by case. I  
11       think we have to be practical here because nobody I  
12       know in the privacy advocacy community wants to see  
13       bad things done in the name of privacy.

14               That's why I brought up with the magazine  
15       publishers, How about putting a box at the bottom  
16       of the card? It's not going to cost you anything.  
17       A lot of people -- and it's opt-out, which is the  
18       altar that many people here are praying at, and  
19       still there was no willingness to commit to  
20       anything like that, and I think that evidence is a  
21       certain level of bad faith, to be frank.

22               I think the one -- the other thing I fear  
23       is like the two real harms to privacy, the most  
24       extreme harms are identity theft which is supposed  
25       to be the fastest growing crime in the U.S., and

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1 information brokers, the guys that get your  
2 information.

3 And for many years the credit reporting  
4 agencies have been the easiest target for those  
5 people, and I think because of litigation under the  
6 Fair Credit Reporting Act and business cases and  
7 settlements and losses, the credit reporting  
8 agencies, you're going to see them tightening and  
9 tightening and tightening the procedures and  
10 protections against those two threats.

11 And what you're going to see is the  
12 identity thieves are going to be turning to these  
13 other sources of data, and so when the marketing  
14 material says this will only be used for marketing  
15 purposes, I think there's a real warning cloud out  
16 there about these existing threats that you can  
17 anticipate.

18 And finally, I have to point to the  
19 ToySmart case which the FTC is familiar with. I  
20 mean, here's a company that had a privacy policy.  
21 It went bankrupt, and its privacy policy lost out  
22 to its fiduciary duty to in that case the trustees  
23 and the bankruptcy, that they had to sell their  
24 data.

25 And I think that if a marketing company

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1 basically says they only want to sell this  
2 information for marketing, but if certain revenue  
3 streams and opportunities come up which says that,  
4 Well, you can sell more individual profiles for  
5 different purposes for screening, then that's going  
6 to create the same quandary because that  
7 corporation will have a fiduciary duty to its  
8 shareholders to go after those revenue streams.

9 MS. RICH: We'll take Greg and then Jason,  
10 and then we'll open it up for questions.

11 MR. MILLER: Just a quick couple of points.  
12 One, I also was sort of surprised this morning  
13 about the response with regard to the check box on  
14 the bottom of the card.

15 For some empirical data from the  
16 entertainment industry from the focus groups we've  
17 been working on, we actually got quite a different  
18 result. We discovered that if we engage consumers,  
19 a trust relationship was built.

20 We started to minimize the notion of  
21 surprising, and we actually found there was an  
22 updraft or an uptake in people opting in if you  
23 gave them the permission to opt-in.

24 I think one of the big fears about this,  
25 from the marketers is that, Gosh, if we start

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1        asking people for permission, they're going to say  
2        no. That was a suggestion this morning that was  
3        made that, no, people won't fill it out. They'll  
4        actually not opt-in. In fact, we find -- we have  
5        empirical data that shows they will.

6                Another point we found out is nobody reads  
7        the privacy policies, as Professor Cate observed  
8        correctly, and we once we started describing to  
9        people the notions of data gathering and what can  
10        be done with it, that was really what started  
11        sending people into a tizzy because, let's face it,  
12        people have no idea what an aggregator is.

13                They don't know the difference between an  
14        aggregator and a marketer. They couldn't recite  
15        that slide up there to make a conscious decision  
16        about whether they should participate or not, and  
17        as you begin to educate them, you end up drifting  
18        into this rat hole of technicalities and nuances.

19                So we had that problem, and to speak to Mr.  
20        Cate's notion of what do we about it, one thing  
21        that we have been experimenting with is the sort of  
22        interactive privacy policy, and it was because on  
23        advice of legal counsel, somebody started saying,  
24        Guess what, it turns out it's not really a policy,  
25        it runs more like an agreement, like a terms of

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1       service agreement. We're going to find that a  
2       privacy policy is in fact a contract, and that sent  
3       up the red flag.

4               And we said, Okay, so we need to reengineer  
5       the privacy policy and be an interactive document,  
6       so what we did with the JOIN program is that we  
7       asked people to actually read through the policy,  
8       meanwhile in the back while we're consorting their  
9       data and setting up their locker, and we asked them  
10      to click off a check box between each major section  
11      in the privacy policy.

12              And we started compiling that data to see  
13       which sections people were reading and what they're  
14       doing with it. It also gave us some affirmation  
15       that they had at least seen the privacy policy,  
16       whether they were going to do anything about it or  
17       not, and we found that that was pretty instructive.

18              And then finally the last thing was that in  
19       the focus groups that we ran, and they were in New  
20       York and Texas and North Carolina and Seattle,  
21       Washington, Los Angeles as I recall, it turned out  
22       that the most common thing that people reacted to  
23       about what would happen with their data was again  
24       being surprised, being bothered, not being left  
25       alone.

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1                   They didn't give permission to get that  
2                   piece of mail or that announcement or whatever, and  
3                   the second thing, identity theft. The second most  
4                   popular concern turned out to be identity theft,  
5                   and this is data, talking to people who are  
6                   consumers of musical and video entertainment and  
7                   are looking for ways to get that through the  
8                   Internet.

9                   MS. RICH: Jason?

10                  DR. CATLETT: Thanks. I think the solution  
11                  to Fred's conundrum about transparency is to  
12                  guarantee each individual access to the data about  
13                  them. If you think transparency means putting up a  
14                  long notice, I think that's very much mistaken.

15                  Let's take the analogy with the federal  
16                  government departments. I don't read the mission  
17                  statement of every federal government department  
18                  that might have personal data about me, but I know  
19                  that if I think they're doing something wrong, I  
20                  can put in a FOIA request, find out the specific  
21                  data they have and see if I need to fix something  
22                  there.

23                  So I think a similar principle of  
24                  transparency would provide a lot of assurances  
25                  about direct marketing companies. Unfortunately,

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1 and other trade groups and companies have refused  
2 not only to give general access to marketing data,  
3 but also even at this workshop to show us specific  
4 examples of known individuals who have consented to  
5 it.

6 I think that's astonishingly arrogant, and  
7 that the FTC should have a forceful response to  
8 open up that transparency to the degree people  
9 want.

10 MS. RICH: Let me follow up. Jerry, when  
11 you said that the privacy policies, when they in  
12 general talk about sharing with third-parties and  
13 that encompasses sharing with compilers, is that --  
14 some of the comments here made me realize we may  
15 not have -- I didn't understand your response.

16 Does it actually discuss sharing with  
17 compilers?

18 MR. CERASALE: No, no. It's sharing with  
19 third parties. The view of DMA is that data that  
20 is shared should be subject to a notice and an  
21 opportunity to say no, and that data can be shared  
22 with third-parties for marketing purposes and  
23 compilers.

24 And I think Win talked about making sure  
25 the information they received had come from

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1       marketers that had given notice and opt-out, so  
2       that's where it's at.

3               As far as the general common notice, there  
4       is no statement concerning compilers at this point.

5               MS. RICH: We'll go to questions, but if  
6       Fred and Evan could -- did you want to say  
7       something?

8               MR. HENDRICKS: Go to questions.

9               MS. RICH: Fred, did you have something  
10      very quick to say.

11              MR. CATE: I just wanted to say, there is  
12      now a data set, which Jason has reminded me of, and  
13      that is if we're going to talk about the federal  
14      FOIA, there's excellent data under what access  
15      under FOIA costs, about the litigation it generates  
16      and about the amount agencies spend on it.

17              At some point in the late 90s the agencies  
18      stopped collecting data because the process of  
19      collecting that data was high, but certainly for  
20      the preceding 20 years, there's excellent data  
21      which would be easily available to the Commission  
22      on what complying with an access regime costs.

23              MS. RICH: I saw some questions in the  
24      audience, lots of questions. This gentleman right  
25      here was holding his hand up earlier, right here

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1 with the gray or the -- I can't see in the light.

2 MR. O'HARROW: I don't know if this is  
3 going to work. I'll talk into it.

4 MS. RICH: Could you say your name?

5 MR. O'HARROW: Robert O'Harrow. I'm a  
6 reporter at The Washington Post, and I have written  
7 a little bit about this over the last couple years.

8 MS. RICH: I didn't know who he was when I  
9 called on him.

10 MR. O'HARROW: That's okay, and excuse me,  
11 and one thing I thought was very interesting, and  
12 I've actually noticed it for several years is the  
13 discussion oftentimes found its way back to the  
14 question of whether or not the use of data  
15 warehousing, data mining and so on increases or  
16 reduces the mail that an individual receives at  
17 home.

18 And then the discussion sort of surrounds  
19 that for quite awhile, and I guess I wanted to sort  
20 of raise a question of whether that's really the  
21 issue. It seems to me that in some ways it used to  
22 be the issue, but in many cases it might be a  
23 canard that tends to distract us from the larger  
24 issue at hand, which I think is profiling.

25 And so I wanted to sort of raise that as an

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1 open ended question, of whether or not that's  
2 something that's salient at this point.

3                   Secondarily, there was an assertion up  
4 there that people don't want to be educated, and I  
5 think what I've found in interviewing many, many  
6 people and industry folks, academics and so on is  
7 that the reality is that people don't want to read  
8 legalistic privacy policies that are written to  
9 meet a very low threshold for privacy disclosure.

10                  I find it very difficult, and I've read a  
11 lot of them, and some of them I've actually  
12 understood. In fact, I would have to say as gently  
13 as possible that I don't think anything could be  
14 further from the truth, and that at my paper, it's  
15 one of the most widely read subjects that we've  
16 written about and that people can't seem to get  
17 enough of true, clear, explanation.

18                  And oftentimes a clear explanation will  
19 create a great deal of anxiety which, to loop back  
20 to my original assertion about the direct marketing  
21 and the mail and so on, the real issue, is the  
22 question is, Do people want to feel like they're  
23 being watched, and charted without their  
24 permission?

25                  Just some food for thought or if anybody

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1       wants to address that.

2                    MS. RICH: Evan?

3                    MR. HENDRICKS: Yes, thank you. I think it  
4        is because some of the steadiest pollings by Lou  
5        Harris and through the 1990s was, "Do you feel like  
6        you're losing control of your data," and that was  
7        the issue.

8                    And, of course, the direct marketing  
9        industry is in the business of sending out mail, so  
10      they're going to try to refocus the issue there,  
11      but the truth of the matter is what's driving this  
12      issue is people feel they're losing control of  
13      their data, and they don't like it, and they would  
14      like something to be done about it.

15                  MS. RICH: Fred?

16                  MR. CATE: Yes. I think on the education  
17      point, of course it's exceptionally well taken. If  
18      you write it in language that people don't  
19      understand, they're less likely to perceive it.

20                  I think, however, the issue goes much  
21      farther than that, and I think probably everyone in  
22      the room would know it, and if you want to try a  
23      test, have The Washington Post when people call to  
24      subscribe or to buy classified ads read the first,  
25      say, page of their privacy policy on the phone to

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1       them, people aren't overly interested.

2               They really didn't want to go on. They  
3       want the service. They couldn't care less. Let's  
4       move ahead. It might be different if you were  
5       going to a doctor or something, very contextual.

6               I understand that, but I think the problem  
7       is, is when we talk about transparency, whether we  
8       mean notices or that you tell everything you do or  
9       you make it possible for them to find it, that  
10       there really is a reality that people are not that  
11       interested in that they love great stories. They  
12       love human interest stories and all of that.

13               But to describe the data processing  
14       operation of a corporation, to have anyone do it,  
15       the best marketer in the world, I just don't think  
16       it can be done.

17               MR. O'HARROW: If I could add one follow up  
18       thought, which I think is interesting. One of the  
19       things that's interesting here is without a doubt  
20       that without a doubt, people love the services,  
21       even if they don't know how it's done.

22               There's no question, people are loving the  
23       personalized services. They're climbing on to the  
24       stuff like crazy, and it's definitely the future of  
25       business in our time.

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1                    Yet, when they find out how that service is  
2                    provided, and not just necessarily in a human  
3                    interest story, but let's say an analytical story,  
4                    they find -- we find that oftentimes they get  
5                    freaked out, and they're not so sure they like the  
6                    service under the terms that they've taken it.

7                    MS. CULNAN: Jessica, can I add just one  
8                    quick point? I think we don't really know a lot  
9                    about sort of the consumer process of learning  
10                   about this and what really works. We haven't done  
11                   a lot of research, and I think it's an area where  
12                   now that we've moved past sort of the, yes,  
13                   everyone is concerned about privacy kind of surveys  
14                   that are coming in, is to really do some academic  
15                   research.

16                   What are the trade-offs people make? What  
17                   kind of notices make sense? I think the idea that,  
18                   well, notices are too hard to understand so let's  
19                   not have any notice at all is a bad idea, just my  
20                   personal preference.

21                   There's also a lot of research that's  
22                   looked at justice, fairness, because this is what  
23                   this is really about, treating people fairly, and a  
24                   lot of times people may not want to read the policy  
25                   or they may not want to exercise their rights under

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1       some kind of a justice system, but they want to  
2       know that they have the rights, and that then makes  
3       them more comfortable in participating, and it  
4       makes them think things are fair.

5                   So even if they don't click on the privacy  
6       policy, they may want to see that link.

7                   DR. CATLETT: Just to comment on Robert's  
8       observation that people like the product but when  
9       they found out how it's made, they're not so sure,  
10      it reminds me of Prince Von Bismark's remark that  
11      the less people know about what goes into making  
12      laws and sausages, the better they'll sleep at  
13      night.

14                  I think that the food analogy is a useful  
15       one here. Congress passed the Pure Food Act in  
16       1904. It didn't actually say you couldn't put  
17       cocaine into the Coca-Cola. They said you just  
18       have to label the fact that you're putting it in.

19                  And I think that transparency in terms of  
20       actually showing us the data about you and what  
21       goes into making it is part of enabling consumers  
22       to have a real choice about whether they want to  
23       buy or participate in that product.

24                  MS. RICH: Let's take the next or a few  
25       more questions.

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1                   MR. LE MAITRE: I'm sorry, I was going to  
2 respond on the point, Am I losing control of my  
3 data. My name is Marc Le Maitre. I work at  
4 Nextel.

5                   I moved to the U.S. about four years ago,  
6 and I started from ground zero literally. Nobody  
7 had anything on me, including the credit reporting  
8 or anything, and the first pieces of mail and the  
9 first unsolicited phone calls were actually quite  
10 welcome. My wife engaged the gentleman on the  
11 phone for an hour and a half. She didn't buy  
12 anything but was delighted to receive the phone  
13 call.

14                  It actually taught me a lot about the  
15 community that I moved into, so I actually welcomed  
16 it, but it's now got to the point now where I can't  
17 sit down in the evenings to dinner with my children  
18 without getting an unsolicited phone call.

19                  And I think it's got to the point now where  
20 I -- at first I knew exactly who it was who was  
21 abusing it. The first company I gave my  
22 information to was my bank. I will not say which  
23 bank, unless you ask me afterwards, but it's now  
24 got to the point where I bought a DVD player two  
25 weeks ago, and I was getting unsolicited requests

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1 to join clubs to buy DVDs.

2 And so some of it is good. My question is:  
3 Where is it going to end? I don't have a great  
4 deal in the way of health information in this  
5 country yet, so I still don't know whether that's  
6 being abused.

7 Financial information I'm fairly confident  
8 is being used without my knowledge, but working in  
9 the wireless industry, things like location  
10 services, where will it end? At which point do I  
11 say, This data is sacrosanct, you cannot have  
12 access to it, or will I have the opportunity, or  
13 will it just be taken for granted that this is just  
14 another piece of information that can be used to  
15 market to me?

16 MS. RICH: Does anyone want to respond?

17 DR. CATLETT: Your video rental records  
18 are sacrosanct according to Congress.

19 MR. LE MAITRE: But not DVDs.

20 DR. CATLETT: I know the fact that you  
21 bought a DVD is not sacrosanct.

22 MR. HENDRICKS: Okay. I think that to  
23 answer your question in the short run, no, you will  
24 not have that right. I don't there's any realistic  
25 chance in the next six months to nine months that

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1 significant legal protections for privacy and  
2 individual's personal information will be passed.

3 I don't think the current power machine and  
4 the administration in the Republican leadership is  
5 interested, and so I think this is more of a long  
6 term struggle.

7 MS. RICH: The gentleman on the left there?

8 MR. BEHRENS: If this is working, I'm Ed  
9 Behrens with the Progress and Freedom Foundation.

10 I wanted to follow up briefly on Mr.  
11 Miller's comments on providing notice, choice, et  
12 cetera, in the interest of serving consumers, but I  
13 think there's two dimensions to the question.

14 One is: Should they be provided? The  
15 second is: Should they be mandated? And I think  
16 that's a separate question.

17 And I would like to draw out the panel on  
18 the practical ramifications of mandated principles  
19 versus not, both beneficial and adverse.

20 Thank you.

21 MS. RICH: Who would like to respond?

22 MR. CERASALE: Sure, what the hell? I like  
23 to use an example of a business model that would  
24 not be allowed by the DMA guidelines and decide  
25 whether or not we want to outlaw that business

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1 model.

2 You go to my Web site, Jerry Cerasale.com,  
3 and the first thing you see, notice, and I sell  
4 radios, so it's a commodity. I try and sell you,  
5 provide you these radios at the lowest price  
6 possible. I hold down costs as much as possible.  
7 In that light I share and rent your information to  
8 others and provide the savings on to you.

9 I do not provide you the opportunity to not  
10 participate in this sharing. I do not provide  
11 access opportunity to you because both of those  
12 things will increase my costs and therefore  
13 increase the cost of my goods to you. If you don't  
14 like this, please, please shop elsewhere.

15 Is that business model illegal? And that's  
16 what most -- a lot of people discussing would make  
17 that an illegal business model. I don't think  
18 that's where we should be.

19 MS. RICH: If people are willing to go a  
20 little bit into the break, we could take some more  
21 questions, and it looks like everyone wants to ask  
22 questions.

23 MR. HENDRICKS: And, Jessica, just quickly,  
24 the OECD guidelines were adopted in 1980 and  
25 endorsed by the United States government and all

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1       Western, European and Japan and Canadian.

2               Yes, I would say we want to see those  
3       guidelines incorporated into law across the board,  
4       yes.

5               MS. LEGIEREM: (Phonetic) My name is Ann  
6       Legierem with a banking agency, and my question's  
7       really with as far as I'm a consumer, this morning  
8       there were statements made that best practices  
9       would have it that marketing associations disclose  
10      that you're going to share the information or  
11      whatever.

12              And I was wondering if there's any kind of  
13      figures that you collect that you really have an  
14      idea of how many do really make disclosures to  
15      their consumers.

16              And then as a consumer, a mother and all, I  
17      saw an article on the CNN Web site recently, about  
18      two weeks ago, about how schools had -- the kids  
19      were surfing the Internet I think as part of their  
20      classroom studies, and there was a marketing  
21      company who had software on the computers.

22              They were following the click streams.  
23      Well, the parents didn't know about it, but then  
24      that, like the dynamic pricing, somebody tripped  
25      over it, found out about it, caused an uproar, it

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1       was pulled.

2                   So I guess what I'm saying is this morning  
3       representations were made about -- representations  
4       were made about, Well, our best practices are that  
5       we disclose to consumers but I'm wondering in  
6       reality how many really do.

7                   MS. RICH:   Would anyone like to respond?

8       Jerry's on the hot seat.

9                   MR. CERASALE:   DMA has a privacy promise  
10      that requires disclosure.   We have an FTC letter  
11      exempting us from antitrust problems as long as we  
12      can kick people out.   There are 3,000 marketers,  
13      3,500 marketers that have signed it.

14                  I would say that 80 percent of the mail you  
15      receive is probably from members of the Direct  
16      Marketing Association, and so we have -- so those  
17      are the numbers we've got.   We have our own mail  
18      preference service, telephone preference service to  
19      pull people off of lists.

20                  There are well over 3 million names on each  
21      of them.   They're free to consumers to get on, and  
22      so those are the numbers that we have, so the major  
23      marketers who are members of ours do direct  
24      marketing, which are some of the largest marketers  
25      in the country, do provide notice and an

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1 opportunity to say no.

2 They in a sense would not follow that  
3 business model I just mentioned.

4 MR. LANE: Can I just make a comment  
5 getting back to Mr. Behrens' comments about  
6 federally mandated laws?

7 I think what this panel has shown, for the  
8 most part because it was supposed to be empirical  
9 evidence about the effects of mergers and  
10 acquisitions or mergers and exchange on consumer  
11 businesses, and there are reports that are  
12 beginning to come out to highlight what some of the  
13 costs are.

14 But I think what we have found is we don't  
15 have a lot of information, that we are just looking  
16 at the impact that information sharing has on the  
17 overall economy. Who is in Mary's first survey on  
18 Web sites and who has privacy policies and who  
19 doesn't and what impact that has on consumers.

20 We have the Forrester research that says \$2  
21 billion lost on Internet sales. Are they real?  
22 What other information do we have?

23 So from our point of view, what our biggest  
24 concern to get to federally mandated legislation is  
25 that we don't have enough information on what harms

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1 are we trying to address specifically and how those  
2 harms -- and the cost benefit ratio of those harms  
3 and where really are the American people.

4                   We know the American people are concerned  
5 about privacy. We all know that. That's why this  
6 room is filled. Yet we don't have the details of  
7 what are those concerns, the next five layers below  
8 that, and I think before we move forward in any  
9 federal legislation, we need -- or state  
10 legislation -- we need to get a little more  
11 dynamics and not the rhetoric that we constantly  
12 hear across the board on both sides, but some real,  
13 factual data of what are we talking about.

14                   And I don't think we're there yet, and this  
15 panel is a perfect example. We don't have a lot of  
16 facts. We're all saying the same rhetoric that  
17 we've been saying for five years now. Yet nothing  
18 has improved, but we're beginning slowly to get  
19 information, and that's critical.

20                   MS. RICH: The gentleman back here?

21                   MR. MEISINER: Thank you, Madam Chair.

22 Speaking of facts, my name is Paul Meisiner from  
23 Amazon.com. I have to do this stand up routine  
24 now.

25                   Maybe it's the lack of oxygen in this room,

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1       but I understand it was alleged that we engaged in  
2       dynamic pricing last fall. In fact, there was  
3       apparently some long description of how this  
4       so-called dynamic pricing was discovered.

5               But let me assure you that policy making is  
6       difficult enough based on facts, but when it's  
7       based on fiction, it cannot go right. We did not  
8       engage in dynamic pricing. We never have, and we  
9       actually have promised never to do it, even though  
10       it would be perfectly legal for us to do so.

11               Let me repeat, back last fall we engaged in  
12       some random price tests where we would serve up  
13       different prices to consumers based on when they  
14       came on. If you were the same person sitting at  
15       the same terminal, same browser, you hit our site  
16       several times, you're going to get a different  
17       price for the same item.

18               The whole idea was to figure out where to  
19       price the item. Well, random, again based not on  
20       demographic information. It was not a privacy  
21       issue, full stop.

22               Well, we got a lot of flack for it and  
23       rightfully so. It confused our consumers, our  
24       customers, and we regretted doing it.

25               As a result what we did is we promised

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1 never to engage in dynamic pricing ever again,  
2 something that would be perfectly legal for us to  
3 do, and then we went and refunded all of our  
4 customers, even the ones who had paid willingly 12  
5 bucks for a CD.

6 We went and refunded them the difference to  
7 the very lowest price, and we said, If we ever in  
8 the future ever do this random price testing again,  
9 we'll do the same thing so that everyone will  
10 always pay the lowest price.

11 Frankly we're being held to a much higher  
12 standard than other businesses are being held to,  
13 but I think frankly it really pains us all when we  
14 have to sit through one of these meetings and find  
15 out that what has been discussed here is factually  
16 inaccurate.

17 DR. CATLETT: Paul, I don't think I  
18 misrepresented that Amazon did the random pricing.  
19 I think I said that it was accused of -- we'll have  
20 it in the record.

21 MS. RICH: Ted Wham has a quick comment,  
22 and then we'll take one more question, and I think  
23 everyone wants to splash water on their face, it's  
24 so hot in here.

25 MR. WHAM: Ted Wham with Database Marketing

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1 for the Internet. I had one quick statistic I  
2 wanted to share. I previously worked at  
3 Excite@Home, and when I was there, I was the Chief  
4 Privacy Officer among several hats that I wore at a  
5 rapidly growing company.

6 There was a segment on 60 Minutes regarding  
7 Internet privacy. It was approximately two years  
8 ago, two and a half years ago. Jason Catlett  
9 actually was one of the speakers on that session  
10 just describing -- so you hold it closer, it works  
11 -- describing the risks to the consumer on the  
12 Internet basis.

13 We were asked by 60 Minutes to participate  
14 as one of the companies being interviewed, and we  
15 originally said yes, and then we went, Oh, God, we  
16 don't want to do this, and we said no.

17 And because we additionally owned a  
18 third-party ad serving firm, MatchLogic, we were  
19 concerned that we were going to be targeted within  
20 the segment and wanted to be very prepared, so we  
21 went full out and made certain everything was  
22 aboveboard, and we went through the privacy policy  
23 links, privacy policy on absolutely every page of  
24 the site, where they remain I believe to this day,  
25 and really tried to make certain that we were

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1 ready.

2 The day immediately following the airing of  
3 one of the top five most watched television shows  
4 in the United States where portions of our site  
5 were shown and the risks to consumers of privacy,  
6 Excite@Home, as it does every day for the past year  
7 or so forth, received over 20 million unique users  
8 visiting the site that day. If my recollection is  
9 correct fewer than 100 of them accessed our privacy  
10 policy links.

11 The notion that consumers want to take --  
12 now, you can argue whether the privacy policy that  
13 I wrote was easily readable and comprehensible and  
14 so forth, but only a hundred people got there to  
15 find out.

16 The notion that the consumer is interested  
17 in learning about this and spending the investment  
18 I think is mistaken. I think the comments that  
19 Fred brought up, Fred Cate brought up that most  
20 consumers want to have, quote, privacy, don't  
21 bother me with the details, is much, much more  
22 accurate.

23 MS. RICH: One more quick question, and the  
24 gentleman over here.

25 MR. SMITH: Yes, Richard Smith, The Privacy

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1 Foundation. One thing we're hearing a lot about,  
2 how profiling and gathering of consumer information  
3 benefits businesses.

4 I've heard very little about cost, other  
5 than two very interesting numbers. One person said  
6 acquisition costs today for E-commerce sites was  
7 \$2,000 a customer, which is probably on the high  
8 side, but I don't know of really any business,  
9 other than maybe the yacht business, that could  
10 afford that.

11 And then also the issue of the credit card  
12 offers, that the number that are going out is going  
13 up dramatically in the last two or three years. At  
14 the same time the response rate inversely  
15 proportional is going down at the same rate.

16 So I'm wondering here in business how much  
17 feedback in the process is really going on. Were  
18 these online and data gathering things cost  
19 effective really or is it just we're on a sled here  
20 and we're heading in this direction and we'll go  
21 on?

22 Thanks.

23 MR. LANE: I think a lot of businesses, and  
24 if you look at the downturn in ad revenue on the  
25 Web sites, as we all know, they're hurting, in the

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1 newspaper industry where San Jose Merc is laying  
2 off hundreds of people because ad revenue is  
3 dropping, and companies are beginning to  
4 reevaluate, Is it worth spending \$2 million  
5 advertising on the Super Bowl.

6 I think there's a wholesale looking at what  
7 is the best way to reach out to your customers, and  
8 that is the whole goal, but what I think is great  
9 though, having said that, there hasn't been a lot  
10 of facts in terms of pure data and research from  
11 this panel.

12 What I think has been very important, and  
13 one of the reasons why I was one who supported the  
14 FTC putting this workshop together, was we do have  
15 an education process to consumers of how  
16 information is used in the economy.

17 And I think the other previous panels were  
18 better at doing that than maybe this one, but I  
19 think once you have a better understanding, I think  
20 there will be less fear, and the trust deficit will  
21 be reduced once there is again an educated  
22 consumer.

23 And so I appreciate and I wanted to thank  
24 the FTC for putting this forth to begin our efforts  
25 at having the business community focus our efforts

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1       on educating consumers on I think these critical  
2       issues because they are all about how our economy  
3       is going to grow and work in the future.

4               MS. RICH: Thank you. Finally we're at our  
5       break. If you could keep it at a short break since  
6       we did get into the break, maybe five minutes, and  
7       then come back, maybe we can try to open the  
8       window.

9               (A brief recess was taken.)

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1 SESSION 5: EMERGING TECHNOLOGIES AND INDUSTRY

2 INITIATIVES: WHAT DOES THE FUTURE HOLD?

3

4 DANA ROSENFELD, Assistant Director, Bureau of

5 Consumer Protection, FTC, Moderator

6

7 PANELISTS:

8

9 JOHN KAMP, Counsel, CPExchange

10 LAWRENCE PONEMON, Founding Board Member,

11 Personalization Consortium

12 BECKY RICHARDS, Director of Compliance and Policy,

13 TRUSTe

14 ARI SCHWARTZ, Senior Policy Analyst, Center for

15 Democracy and Technology

16 RICHARD SMITH, Chief Technology Officer, Privacy

17 Foundation

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## SESSION FIVE

2

## EMERGING TECHNOLOGIES AND INDUSTRY INITIATIVES:

3

## WHAT DOES THE FUTURE HOLD?

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5

MS. ROSENFELD: Okay. Everybody, we're getting ready to start our last panel of the day. Please take your seats. Please take your seats. Thank you.

9

Welcome, everyone, to our last panel of the day. I'm Dana Rosenfeld. I'm an Assistant Director in the Office of the Director and the Bureau of Consumer Protection.

13

Our final panel is entitled emerging technologies and industry initiatives, what does the future hold, which I think will be a very interesting panel.

17

We are going to discuss whether new technologies are emerging that will increase the sharing of detailed consumer data, and also we will focus on what self-regulatory initiatives are underway to address the privacy of consumer data in the merger and exchange process.

23

Our first presenter today is John Kamp. John is an attorney with Wiley, Rein & Fielding in town and serves as counsel for CPExchange. He has

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1 extensive experience in privacy and other  
2 regulatory issues through his work of over more  
3 than ten years as senior vice president with the  
4 American Association of Advertising Agencies, the  
5 four As, and from his ten years at the FCC before  
6 that.

7 CPEXchange Network is a volunteer  
8 Consortium of over 90 business organizations. It's  
9 dedicated to developing a vendor-neutral open  
10 standard to facilitate the exchange of privacy-  
11 enabled customer information across enterprise  
12 applications.

13 CPEXchange facilitates the management and  
14 promotion of customer relationships by businesses  
15 across industry sectors.

16 Special data elements of the CPEXchange  
17 specification support the development of privacy  
18 policies by companies consistent with Fair  
19 Information Practices.

20 And with that, I will turn the podium over  
21 to John.

22 MR. KAMP: Thank you, Dana. As I'm  
23 bringing this up, I must remind some of you, many  
24 of you know that I'm a former college professor,  
25 and as such, we former college professors know that

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1       there is only one class in the day that's worse  
2       than teaching an eight o'clock in the morning  
3       class, and that's a four o'clock class.

4               So we're going to make this quick. We're  
5       going to keep it lively and go forward from there,  
6       and we also, as professors, know that we learn more  
7       from our students, and thank you to the FTC for  
8       organizing this today because I know that we all  
9       have learned a lot.

10               The CPExchange is about consumers  
11       generally, and one of the things I think as we've  
12       listened today through the morning, we heard people  
13       talking about it, was businesses who were doing  
14       most of this, but they were doing it in order to  
15       reach consumers.

16               And looking at our sort of then and now  
17       kind of yin and yang here, this is about long-term  
18       customer-focused relationships, about new business  
19       processes, but it's mostly about high consumer  
20       knowledge, mass customization, multiple channels,  
21       proactive, integrated and highly responsive to  
22       consumer preferences.

23               We want to know who are our customers, what  
24       are their wants and needs, what are the economic  
25       value of those needs, and how do we apply that

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1 knowledge and how do we focus on those consumers.

2 So the successful enterprise interacts with  
3 consumers through many channels such as -- and has  
4 many opportunities to understand those consumers.

5 The imperatives in all of this, this  
6 customer driven, are protection of privacy, the  
7 sensing and responding to consumers' needs,  
8 satisfying those needs, reducing those costs to  
9 consumers and increasing the shareholders' equity  
10 of the company.

11 Looking at this, the CPExchange was really  
12 designed to facilitate an enterprise's ability to  
13 share consumer information internally in large  
14 companies. Of course it's gone forward. It's no  
15 longer just used, designed for consumers.

16 If you look at this model here, the  
17 schematic here, the CPExchange core, the group got  
18 together to look at the preferences, business  
19 objects, whatever, also added the functionality of  
20 the Web, most importantly through Dan Jaye, also  
21 someone who is very familiar in these quarters, at  
22 Engage Technologies, was part of the FTC Advisory  
23 Committee on Access and Security, worked very hard  
24 to develop the CPExchange privacy principles, which  
25 are P3P compatible, and all this is an XML

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1 schemata.

2 Looking at just the privacy declaration  
3 component in the P3P compatible, you see in that,  
4 you see very specific data elements for purpose,  
5 retention and access, and looking just at one of  
6 those, the retention component, you can see that  
7 there are many data elements that make it possible  
8 for this system, this protocol to ensure that there  
9 is a face with the consumer.

10 Now, remember, CPExchange is not a data  
11 aggregator or a business that's in the business of  
12 aggregating these data. It essentially is the  
13 development of a protocol that people can use, may  
14 use. It's wholly voluntary, can be used by  
15 companies for the purposes they wish.

16 But because in this -- in these late data  
17 sensitive times, privacy times, it was created  
18 during the period that the FTC was looking at these  
19 privacy principles and customers were making their  
20 preferences so apparent to companies, these privacy  
21 elements were contained in it.

22 So quickly our summary slide, CPExchange  
23 facilitates that customer awareness and focus,  
24 enables corporate privacy policy implementation and  
25 addresses the privacy preferences of the consumer.

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1                   It's platform, vendor and application  
2                   independent, provides a comprehensive view of the  
3                   customer and the way that customer interacts with  
4                   the many facets of the enterprise, provides  
5                   granular privacy and an authorization model and is  
6                   designed to promote optimal query and reporting  
7                   systems.

8                   We suggest that you, as you look at this,  
9                   remember that it's neutral, and it's open, and you  
10                  also can find more information about it by going to  
11                  the Web site CPExchange.org.

12                  Thank you.

13                  MS. ROSENFELD: Thank you, John. That was  
14                  very succinct.

15                  Our next presenter is Ari Schwartz. Ari is  
16                  a policy analyst at the Center for Democracy and  
17                  Technology, CDT. His work focuses on protecting  
18                  and building privacy protections in the digital age  
19                  by advocating for increased individual control over  
20                  personal information and expanded access to  
21                  government information via the Internet.

22                  Ari also serves on the advisory committee  
23                  of the Worldwide Web Consortium and is a monthly  
24                  columnist for Federal Computer Week Magazine.

25                  Ari?

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1                   MR. SCHWARTZ: Thank you. This is the  
2                   first time I've ever seen the windows opened up in  
3                   this room, and I kind of like it actually.

4                   I'm going to talk about how technology has  
5                   both -- kind of the positive ways that these new  
6                   technologies can be used to protect privacy. The  
7                   story with most of these new technologies is always  
8                   bad news for privacy and good news for privacy.

9                   In this case the bad news is you look at  
10                   XML technologies, technologies that allow companies  
11                   to tag information and exchange it more clearly and  
12                   more openly means that there's greater sharing and  
13                   that there's going to be greater profiling.

14                   Richard Smith will go into this in a little  
15                   bit more detail, but the good news is that these  
16                   same technologies open the door for new types of  
17                   privacy enhancing technologies.

18                   I'm just going to give you two examples of  
19                   this to kind of kick things off. At CDT we don't  
20                   build technologies, and that's for other people to  
21                   come up with those kind of -- these kind of  
22                   applications, but just to give some ideas of what  
23                   people have been talking about and what they've  
24                   been thinking about.

25                   The first one is the idea of tagging data

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1       collections with a current privacy policy using the  
2       P3P vocabulary. John talked about this a little  
3       bit, but I'm going to try to explain a little bit  
4       more what P3P is and how other technologies can use  
5       this.

6                   P3P was really designed originally to do  
7       business to-consumer transactions, to get at the  
8       question that we heard on the last panel asked  
9       maybe seven or eight times, about how consumers are  
10      having trouble reading privacy policies, that  
11      they're seven pages long, that they don't go there.

12                  Ted Wham brought up the point that people  
13      aren't going to a page. Well, having read many,  
14      many, many privacy policies over the past six  
15      years, I can tell you that I find them difficult to  
16      read, and therefore I know how consumers must feel,  
17      that you go to one, you don't really feel the need  
18      to go to the next one if you're not going to be  
19      able to understand it.

20                  The idea of P3P was to allow a consumer to  
21      put in their preferences, their expectations of  
22      what they want to see out of a site and have the  
23      site put in what their privacy policy is. When the  
24      browser gets to that site, they match up, and at  
25      that point the consumer has more control, and they

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1 can decide whether to block that site. They can  
2 decide whether to provide information. They can be  
3 prompted.

4                   Really that's up to the browser  
5 manufacturer right now, and we're going to be  
6 seeing some of these applications in the next few  
7 months, but in order to do this, we had to create a  
8 vocabulary because we went around looking for  
9 vocabularies for privacy that went in to the real  
10 details about retention, as John showed us.

11                  And no vocabularies existed that really  
12 gave kind of multiple choice answers in the way  
13 that a Web site would need to be able to describe  
14 it if P3P were going to work.

15                  So we created this vocabulary. Let me see  
16 if I can get it open now. I lost the mouse. Oh,  
17 here it is. This mouse, okay.

18                  So this is just the basic P3P vocabulary,  
19 and we came up with these questions based on the  
20 Fair Information Practices. The eight Fair  
21 Information Practices in the OECD guidelines were  
22 the starting point, but we really instead of --  
23 because those are really at a high level and we had  
24 to go into the detail and answer the multiple  
25 choice questions underneath, we worked with -- this

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1 is a P3P working group, worked with data  
2 commissioners in the EU and in Canada, privacy  
3 advocates, companies and others, and really built  
4 this kind of -- the kind of questions that would  
5 need to be answered.

6                   But the idea here is that this is -- while  
7 this was -- we originally came up with this  
8 vocabulary to be used for business to consumers,  
9 people quickly found out you can use this for  
10 business to business as well, for sharing of  
11 information.

12                  You can tag this on and use it to help  
13 companies audit internally or have third parties  
14 come in and audit for them, to set up software that  
15 controls the use of information so that you can't  
16 send out, put people's Email addresses in the "to"  
17 field when it has -- when individuals sign up to a  
18 policy saying that their Email address would not be  
19 shared.

20                  There's a company called Privacy Wall  
21 that's building this kind of software right now, so  
22 there's a whole bunch of uses for this technology  
23 not originally envisioned, but you can use this  
24 vocabulary to answer that.

25                  Also, there's the ability of access that

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1       these new technologies provide. We heard a lot in  
2       the last panel again about cost and how cost -- how  
3       this was going to be -- that access was too  
4       expensive for consumers, this was discussed a lot,  
5       to provide to consumers.

6               Well, if companies can provide the sharing  
7       between companies and make that less expensive,  
8       then they can also make it less expensive to  
9       provide it to consumers as well, and we shouldn't  
10      be overlooking the fact that making it cheaper in  
11      one aspect is also making it cheaper in another  
12      aspect.

13               And then the final point here is the  
14       question of how this is really going to work and  
15       whether there will be market incentives for  
16       companies to use this vocabulary, to use the new  
17       access features, and that's still really  
18       questionable.

19               This is obviously all stuff that happens  
20       behind the scenes, and right now responsible  
21       companies seem to be taking up these ideas, but  
22       will it be wide spread practice? And the answer to  
23       that is that we still don't know.

24               MS. ROSENFELD: Thank you. Ari.

25               Our next presenter is Richard Smith.

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1       Richard is the Chief Technology Officer for The  
2       Privacy Foundation, where he directs The  
3       Foundation's research activities. He also has  
4       primary responsibility for explaining The  
5       Foundation's research findings to the media and at  
6       public events like this.

7                   Richard?

8                   MR. SMITH: First of all, I want to thank  
9       the FTC for inviting me to speak today, and I was  
10      asked to actually look into the crystal ball here  
11      to see where technology is heading in terms of  
12      sharing more data, this idea of emerging  
13      technologies increasing the sharing, and very  
14      fortuitously yesterday, Steve Ballmer, the CEO of  
15      Microsoft Corporation, gave a speech for the  
16      Association of Computing Machinery, that's sort of  
17      like the Bar Association for the lawyers in the  
18      group here, gave a talk about XML which was going  
19      to be my topic so I thought that was very good.

20                  And I would like to quote from the article  
21      that ZDNet wrote which said that XML as the lingua  
22      franca of cyberspace would affect -- and it would  
23      effectively clear away lingering barriers blocking  
24      companies from exchanging information over the  
25      Internet. And then the article goes along to talk

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1       about the tools that are being developed to support  
2       XML and so on.

3                   What I found very interesting was there was  
4       really no discussion of what kind of data is going  
5       to be going back and forth, and pretty obviously  
6       some of it is going to be about widgets, about  
7       cars, packages and whatever, but it also is going  
8       to be personal information, so the answer here,  
9       looking into the crystal ball, is clearly yes,  
10      we're going to see more sharing because tools are  
11      being developed to make it easier to do.

12                  There's nothing magical about XML. It's a  
13       particular specification of how companies agree to  
14       communicate data from one place to another, just  
15       like English is a way that humans communicate.

16                  The nice thing about it, it's very easy to  
17       understand, and it's also human readable, so for  
18       folks like myself who kind of like to look at  
19       privacy practices of companies, it's actually going  
20       to make it easier to look into things, but clearly  
21       we're going to see it's -- XML is going to help in  
22       the sharing of data, but it's also going to help in  
23       some of these areas like P3P and CPExchange,  
24       providing some privacy controls.

25                  The question is is, Will they be

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1        implemented? Just because they're in a  
2        specification there's still the issue of, Will they  
3        be implemented.

4                Now, another issue, if you want to predict  
5        the future, I believe in looking in a crystal ball,  
6        you have to also follow the money. We first follow  
7        the technology, but then we also follow the money.

8                And pretty clearly in the Internet I think  
9        the most ardent cheerleader would now say that  
10        we've had a dot com meltdown of companies literally  
11        wasting billions of dollars on business models that  
12        are not going anywhere.

13                But one thing is very clear is that the  
14        Internet is a very good place to get information on  
15        things. If I wanted to go to the Google Search  
16        Engine, I could get information about anyone in  
17        this room probably, except for myself because I  
18        have a common name.

19                But if you have a not so common name, it's  
20        a lot easier to find out information, and I think  
21        that really shows a good business model here, which  
22        is the idea that people are going to go to the  
23        Internet to make purchase decisions but then go to  
24        the offline world and buy stuff, like buy a car.

25                And so I really see that as sort of the

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1 money starting to focus people and business models  
2 in that direction, and what that's going to mean is  
3 the people that provide the information on the  
4 Internet are going to want a piece of the action  
5 when the sale is made in the offline world.

6 So I see technologies like XML and  
7 CPExchange being done for that, so let me give you  
8 a quick example here. We've all bought cars, and  
9 it's always an interesting experience. Now that  
10 I'm older, I actually feel fairly confident about  
11 going in the showroom but at a younger age, it was  
12 sort of like me against them, and they had the  
13 information, and I think that's going to get more  
14 interesting here.

15 For example, we go to a car Web site,  
16 research three different models of cars that we're  
17 interested in, and the Web site remembers that  
18 information.

19 Well, the fun thing is going to be I  
20 believe in the future is you can walk into the car  
21 dealer. They ask for your driver's license in  
22 order to do a test drive, and the other thing  
23 they're using that for is to go find out what  
24 you've been researching on the Web here, for what  
25 kind of cars you're interested in.

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1                   And that gives the salesman one up on you,  
2 which is he knows the other competitive models  
3 you're looking at, and he can have computer  
4 software that recommends how to sell against these  
5 cars. You can also be scored on the likelihood of  
6 buying a particular model that you express interest  
7 in and so on.

8                   So I think we're going to see this very  
9 strong economic push, and I think it's basically  
10 inevitable that when we have one part of the market  
11 which seems to be dollar poor and another part of  
12 the market where the money is being spent, that the  
13 business models are going to have to go that  
14 direction.

15                  And we're going to see -- be forced into  
16 more information sharing. It's just an inevitable  
17 part of this economics, much more so than we've  
18 seen on the Internet itself.

19                  Thank you very much.

20                  MS. ROSENFELD: Thank you, Richard.

21                  Our next panelist is Lawrence Ponemon, who  
22 is the president of Guardent, a services and  
23 technology company enabling security, privacy and  
24 data protection.

25                  Prior to joining Guardent, Larry was the

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1 founder of the PricewaterhouseCoopers global  
2 privacy practice. Larry is a founding board member  
3 of The Personalization Consortium, and he will talk  
4 about that organization today.

5 MR. PONEMON: Thank you. Everyone looks  
6 really hot and really tired. Is that true or is  
7 that just a perception that I have? I need to  
8 personalize on you.

9 How many people worry about personalization  
10 and privacy? Raise your hand. Oh, come on. I  
11 know it's late, everyone. How many people worry  
12 about personalization privacy in the wireless Web?  
13 Let's see if we can get those hands a little bit  
14 higher?

15 Quite frankly, there is actually a lot to  
16 worry about, in my opinion, and I know I sound like  
17 a heretic as a founding member of the  
18 Personalization Consortium. I have good news. I'm  
19 going to be fast in my presentation, and I do not  
20 have Power Point slides so you can actually watch  
21 me.

22 The bad news is I'm going to read to you  
23 our blurb about what the Personalization Consortium  
24 is, and I'm going to tell you where we are and what  
25 we are trying to achieve.

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1                   The Personalization Consortium is an  
2                   international advocacy group formed to promote the  
3                   development and use of responsible one-to-one  
4                   marketing technology and practices on the worldwide  
5                   Web.

6                   The Consortium encourages the growth and  
7                   success of electronic commerce that delivers the  
8                   benefits of personalized electronic marketing while  
9                   articulating best practices and technologies that  
10                  protect the interest of consumers, and I want to  
11                  underscore consumers.

12                  To achieve its goal of expanding the scope  
13                  and use of personalization technology that respects  
14                  consumer privacy, the Consortium has many  
15                  functions, for example, to provide a forum for  
16                  industry discussion and information, sponsor  
17                  research, foster standards for technology and best  
18                  practices and work towards consumer understanding.  
19                  And toward this end the Consortium has established  
20                  ethical information and privacy management  
21                  objectives that articulate its goal to create a  
22                  solid process that enables consumers to confidently  
23                  use personalization technology for their benefit.

24                  Now, the Consortium was established about a  
25                  year ago chaired by Don Peppers and a few other key

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1       folks. I was co-opted into joining the Consortium  
2       because of my very strong and very weird views on  
3       privacy. So like you, I was pretty suspicious.

4                   So I attended my first board meeting, and  
5       at the first board meeting were about 30 or 40  
6       company representatives, and I saw a sincere  
7       interest to do it right, and I had this kind of  
8       vision in my mind.

9                   If someone could invent a cigarette that  
10       didn't cause cancer, wasn't habit forming, maybe it  
11       won't be so bad to smoke, right, and maybe that's  
12       where we are in the evolution of personalization.  
13       It's probably a bad analogy unfortunately, unless  
14       you're a smoker.

15                  But the idea is that we've grown from a  
16       small group of good companies to 67 great  
17       companies, and there are many, many other companies  
18       that are taking a wait and see attitude.

19                  Let me tell you a little bit about some of  
20       the challenges. First, we set high standards. If  
21       you read the Personalization Consortium and you go  
22       to our Web site which is [www.Personalization.org](http://www.Personalization.org), I  
23       don't know how to spell personalization, but my  
24       friend Jason can spell it for you. And I think at  
25       the end of the day though when you go to that Web

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1 site, you're going to find that these principles  
2 are about equal, not better than, not worse than,  
3 but about equal to many wonderful statements about  
4 privacy.

5 So then you scratch your head and you say,  
6 "What's the difference here." The difference is  
7 we're basically holding our members to a very high  
8 standard. That is, it's not just good enough to  
9 say you're going to comply with these principles,  
10 but you have to undergo an audit, the A word,  
11 audit.

12 And that's pretty scary because if you're a  
13 small organization or a large organization and you  
14 say you're going to be a member and suddenly you're  
15 no longer a member, you're basically killed or  
16 kicked off the membership list, it's a signal that  
17 basically suggests -- not suggests, that tells the  
18 universe that the company failed to comply.

19 Let me just tell you the courage of  
20 members. The founding members are very courageous  
21 because right now they just generally assume that  
22 they're going to pass this audit, but my guess is  
23 many will fall by the wayside and that the end  
24 result will be that some members will not make the  
25 grade.

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1                   Now, let me just tell you it's not for pure  
2 altruism, it's not because we're good guys.  
3 There's a real economic value proposition,  
4 something a little bit different than regulation  
5 and lawsuits, and that is if we do it right,  
6 becoming a member is going to be a good thing.  
7 It's going to be something that is of great value.  
8 It's going to be a way to differentiate your  
9 services and product in this ever evolving  
10 marketplace.

11                  Now, if that's so, then people will knock  
12 the door down to become a member. To become a  
13 member will have real substantive meaning, and  
14 that's really what we're trying to achieve through  
15 the independent verification.

16                  Also, some people are confused, and the  
17 next speaker will talk about TRUSTe. The next  
18 speaker will also discuss the issue of seals. This  
19 is not just a seal. It's not a new form of a seal  
20 program. It is in fact about an independent audit  
21 conducted by a trusted party.

22                  So that's all I want to say about the  
23 Personalization Consortium. I'm very proud to be a  
24 member, even though I was co-opted to becoming a  
25 member originally. It's a great group, and I

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1       really encourage everyone here, as well as in the  
2       spillover rooms, to go to our Web site and to find  
3       out more about what we are and what we want to  
4       become.

5               Okay so without further ado, I'll sit down.  
6       Thanks.

7               MS. ROSENFIELD:    Thanks.  Thank you, Larry.  
8       Our next panelist is Becky Richards.  Becky is the  
9       Director of Compliance and Policy for TRUSTe, an  
10      Internet privacy seal program.  She oversees all  
11      aspects of enforcement operations and policy  
12      developments for the TRUSTe program, including  
13      TRUSTe's compliance operations and the TRUSTe Watch  
14      Dog Dispute Resolution Process.

15              Prior to joining TRUSTe, Becky was an  
16      international trade specialist on the electronic  
17      commerce task force at the U.S. Department of  
18      Commerce's International Trade Administration.

19              Becky?  That's a mouthful.

20              MS. RICHARDS:  It is a mouthful.  I don't  
21      have a Power Point presentation either, so being  
22      the last person to speak on the last panel, I hope  
23      we'll get through this quickly.

24              I'm actually not going to really talk about  
25      seals today.  Most of you probably know what they

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1 are. Instead, I'm going to talk -- we've heard  
2 today a lot about merging and exchanging of  
3 consumer data and what the benefits are and what  
4 the risks are.

5 And at TRUSTe, we've been following the  
6 practices of merging and exchanging consumer data  
7 closely, but TRUSTe's main focus in the past has  
8 been on the explicit and inexplicit collection of  
9 information from consumers and the sharing of such  
10 information.

11 TRUSTe's monitored the increasing practice  
12 of merging and exchanging and has been and will  
13 continue to work to ensure that consumers are aware  
14 of these practices.

15 Mary Culnan in the previous panel brought  
16 up a very good point. Transparency is very  
17 important. If we're going to continue to increase  
18 growth via E-commerce, we need to have consumers'  
19 trust, and trust comes through transparency and  
20 understanding of what those practices are.

21 Currently because we've really been looking  
22 at how information is collected from the consumer  
23 as opposed to the other way around, our license  
24 agreement doesn't -- does not explicitly address  
25 the disclosure of merging and exchanging of

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1 information, although depending upon the practices,  
2 it could be required.

3 As we look to the future, we will  
4 explicitly require companies to disclose the  
5 practices of merging and exchanging information, to  
6 increase the transparency and to increase trust.

7 Our current practices are that we ask Web  
8 sites whether they're combining information from  
9 third parties by asking in the self-assessment, " Is  
10 your company supplementing the information that you  
11 receive directly from users with information  
12 received by an offline means or from a third-party?  
13 If so, explain."

14 So if a Web site states that information is  
15 being supplemented from such sources, this should  
16 be disclosed in the privacy policy.

17 TRUSTe has a model privacy statement that  
18 is currently used by a number of companies as a  
19 privacy resource, and in this model privacy  
20 statement, we provide two different examples of how  
21 a company can address the supplementation of  
22 consumer information from third parties.

23 The first example is really more  
24 appropriate for gathering of financial information,  
25 and so I won't go over that specifically.

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1                   Our second example deals with the combining  
2                   of marketing information with consumer information.  
3                   It states: "In order for this Web site to enhance  
4                   its ability to tailor the site to an individual's  
5                   preference, we combine information about the  
6                   purchasing habits of users with similar information  
7                   from our partners, Company Y and Company Z, to  
8                   create a personalized user profile." So this is  
9                   the disclosure.

10                  Now, for perhaps maybe a more real world  
11                  example. I have three examples. The first one is  
12                  one of our licensees that states explicitly that  
13                  they do not supplement consumer information by  
14                  stating that all information excluding our user  
15                  passwords originates solely from our primary  
16                  client.

17                  Now, in the case of a company that does  
18                  supplement consumer information, one of our  
19                  licensees states: "We may research demographics,  
20                  interests and behavior of our customers based on  
21                  the information provided to us upon registration."

22                  And finally, a third example that gets  
23                  lengthier; and as we've discussed, privacy policies  
24                  can be rather long: "The combination of offline  
25                  and online information provided by the customer has

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1       the ability to enhance the customer experience and  
2       make customers' interaction more meaningful and  
3       relevant. Company X requires that any consumer  
4       profiling or purchasing behavior captured online  
5       and combined with offline information be clearly  
6       stated to the consumer at the time of the online  
7       data collection. The consumer will have the  
8       ability to choose not to be part of a subsequent  
9       marketing campaign."

10           So in this last disclosure, the company is  
11       giving the individual the opportunity to opt-out of  
12       being profiled.

13           I would like to thank the Commission for  
14       having today's workshop. I think it's been very  
15       informative as to both the benefits and risks  
16       involved in merging and exchanging information  
17       across businesses.

18           The important part of each of these, in  
19       thinking about this for both businesses and  
20       consumers, is that the consumer needs to be  
21       informed of the practice if we are going to  
22       continue to increase transparency and trust and  
23       continue to see increase in business on the  
24       Internet.

25           And as I mentioned at the beginning, TRUSTe

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1       will be changing our license statement to  
2       explicitly address this particular practice in the  
3       future.

4               Thank you.

5               MS. ROSENFELD: Thank you, Becky. I have a  
6       few questions, we want to try to stick to the time  
7       frame here, and then we'll open up the floor to  
8       questions from the audience.

9               John, we know CPExchange is an open and  
10       it's a voluntary standard, and I think that means  
11       that the privacy related features also have to be  
12       voluntarily adopted by the users.

13               How likely is it that companies are going  
14       to deplore the privacy-related features of the  
15       specification in your view?

16               MR. KAMP: I hope they don't deplore them.  
17       It is getting late though.

18               MS. ROSENFELD: Did I say deplore?

19               MR. KAMP: Deploy.

20               MS. ROSENFELD: I'm sorry, the heat is  
21       getting to everyone here.

22               MR. KAMP: We don't know. In fact, we have  
23       reason to believe that they don't deplore them,  
24       that they will deploy them, but because it's a  
25       voluntary standard, as Jason once described it,

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1       it's a safety that may or may not be used.

2                   We expect though, because remember the  
3                   whole point of all of this day has been businesses  
4                   are interested in customization because consumers  
5                   are demanding it.

6                   As consumers demand more and more privacy  
7                   transparency, the privacy transparency will be used  
8                   by the successful companies, and they will use that  
9                   part of the CPExchange protocol.

10                  MS. ROSENFIELD: Is there any effort  
11                  underway to develop a code of best practices for  
12                  those users of the specification?

13                  MR. KAMP: We worked first of all to make  
14                  sure it was P3P compatible because we believe  
15                  that's really very important, and we have, just in  
16                  the last week, sat down again with the P3P people,  
17                  CDT, and are exploring alternatives, ways in which  
18                  we can continue to ensure that the protocol is as  
19                  multifunctional in this regard as possible and will  
20                  be looking at those very kind of things going  
21                  forward.

22                  MS. ROSENFIELD: I guess on a related note,  
23                  in terms of being multifunctional, will the  
24                  specification be used to facilitate merger and  
25                  exchange of consumer data across media, for

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1 example, into wireless space?

2 MR. KAMP: Again, it's a neutral protocol.

3 It was designed for internal data sharing within  
4 companies, and as we went forward, we added the  
5 other functionality.

6 My guess is that all of the things that  
7 will be possible and will be used by companies are  
8 likely to use this protocol because we think that  
9 it's valuable in that regard, and, yes, it could  
10 very well be used for wireless or whatever other  
11 scary things that might happen in privacy going  
12 forward.

13 But because of the kinds of focus there has  
14 been on privacy by this agency and others going  
15 forward, I'm convinced that the American public are  
16 learning what privacy is all about and learning how  
17 to use, how to make their choices, and that those  
18 kinds of things will automatically develop as the  
19 industry develops.

20 The important point here is not that the  
21 functionality will be required, but that it's built  
22 into the system so that it can be used and the  
23 commitment by CPEExchange to make sure that the  
24 system does have that functionality.

25 MS. ROSENFELD: Go ahead, Ari.

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1                   MR. SCHWARTZ: In terms of functionality of  
2                   CPExchange and whether that alone will spur  
3                   individual -- spur companies to use it, I do think  
4                   that the regular P3P that I was talking about  
5                   earlier in terms of Web sites, Web browsers going  
6                   to Web sites and seeing whether they have privacy  
7                   policies that match consumers' policy, that has a  
8                   -- direct impact on the consumer.

9                   There's direct feedback that a consumer  
10                  will want to see a privacy policy because it will  
11                  show up in their browser. CPExchange doesn't have  
12                  that ability to be right in the consumer's face  
13                  like that, so there is that missing step there.

14                  It really does have to be a responsible  
15                  company to take that on, and I look forward to  
16                  working with the CPExchange people, but we have to  
17                  recognize that there is that missing piece with all  
18                  of this behind the scenes type transaction.

19                  MS. ROSENFELD: Larry, can you just  
20                  describe the kinds of companies that are members of  
21                  the Personalization Consortium and what kinds of  
22                  companies you expect will join in the future?

23                  MR. PONEMON: Good question. Of our  
24                  members today, we have a combination of tool  
25                  makers, people who are inventing new technologies,

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1       both in the wired and the wireless area, and  
2       they're the largest chunk of members.

3                   We also have vendors, companies that are  
4       not actually making the technology but selling that  
5       technology or embedding that technology into other  
6       tools, so for example in the CRM universe we see  
7       companies fall into that space.

8                   Then we have end users, companies that, for  
9       example, like AMR, American Airlines or Charles  
10       Schwab, that are actually the users of this  
11       technology.

12                  If you kind of think about the model, the  
13       model is a little bit weird because it's a  
14       B-to-B-to-C model. We're adding now a new element,  
15       and so the key is to get to the consumer.

16                  Even if you are in a business mode, and you  
17       personally -- as an organization you do not have  
18       direct access to personal information, there's  
19       still a chain of trust and responsibility, and  
20       that's really what the audit is attempting to  
21       prove.

22                  So you can't say, "Well, we passed but  
23       guess what, the audit was simple because we don't  
24       have personal information, we don't collect any  
25       information because we're a tool maker." You can't

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1 get away with that.

2 That's obviously a very slippery slope, but  
3 that's not what the audit is about, so the members  
4 are primarily in those three categories, and we're  
5 really -- to answer your question about what is the  
6 future, if you'll look at all of the users of  
7 personal information, there's a huge body of end  
8 user organizations that would love to learn more  
9 and become a member and to make sure that they're  
10 using the technology that is ethical and that is  
11 being managed at a high level.

12 Unfortunately to get there, we really have  
13 to have those rigorous standards in place, and it's  
14 ultimately the responsibility of the tool maker to  
15 ensure that the process is a fair one, is a good  
16 one, and so we would encourage end users as well as  
17 tool makers and vendors to participate in this  
18 process.

19 MS. ROSENFELD: Thank you. What about  
20 enforcement with the guidelines?

21 MR. PONEMON: You had to ask the  
22 enforcement question, end of the day, we're all  
23 sweating here. Now I'm really sweating.

24 Basically if you don't comply with this,  
25 and you know my favorite word, we're going to kill

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1       our members. We have a license. They've agreed  
2       to -- no, we're not going to kill our members, but  
3       what we're going to do is you're going to get  
4       kicked off the membership scroll.

5           And we're actually in the final stages of  
6       establishing a disclosure standard. While it has  
7       not been defined as yet, the plan is to have a  
8       status report on our Web site to show where members  
9       are in the auditing process, so obviously if you're  
10      not there, if you mysteriously disappear one day,  
11      you could reach your own natural conclusion.

12           But understand that enforcement is very,  
13      very important for this to work. Without  
14      enforcement, it is a wasted effort. It is  
15      virtually a wasted effort, so self regulation means  
16      that the organizations that have become members  
17      have to work hard to maintain their membership, and  
18      enforcement is going to be very costly for some  
19      organizations that don't make the grade.

20           MS. ROSENFELD: Becky, you talked about  
21      TRUSTe intending to revise your licensing  
22      agreements to require disclosures about data merger  
23      and exchange of information, and I'm wondering if  
24      you have a time table for that.

25           MS. RICHARDS: We last updated ours I think

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1       in August, September, and I'm told that the legal  
2       fees have to stay lower so I'm not supposed to give  
3       it to our lawyers for a couple more months, and we  
4       also want to have a certain level of stability in  
5       the program.

6               And we're actually on the sixth version  
7       right now, we'll be going to the seventh, and there  
8       will be a number of revisions, not just this one  
9       but also to sort of-- what we have done always is  
10      to follow along what the privacy debate is, where  
11      are we going with things and make sure we're a step  
12      ahead.

13              And so I think that we can anticipate to  
14      see those sometimes in the July/August time frame  
15      as we move forward.

16              MS. ROSENFIELD: I think now I'm going to  
17      open up to audience questions. The gentleman back  
18      there, and again please identify yourself and your  
19      organization.

20              MR. LE MAITRE: Hi. I'm Marc Le Maitre. I  
21      work with Nextel Communications.

22              Larry, I agree absolutely, entirely with  
23      you that privacy without enforcement doesn't fly.  
24      During the B-to-B world, very few businesses would  
25      do anything without signing a contract, and I'm

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1       aware that P3P is policy based, no need for a  
2       contract in P3P, how do you get from policy based  
3       to contract based so that you've got some basis on  
4       which to place -- to put some enforcement around?

5                    MR. PONEMON: You're asking a very good  
6       question, and we've tried to address this over the  
7       course of the last few years, especially with my  
8       involvement with the FTC and the Advisory  
9       Committee.

10                  Quite frankly, one of the problems you have  
11       is a policy, doesn't necessarily suggest truth, so  
12       you have a lot of organizations that are very quick  
13       to post a policy, and P3P by the way is kind of an  
14       offshoot of that.

15                  P3P is good, but unless you have an ability  
16       to say, Okay, you have this policy, how do we know  
17       you're complying, it's kind of an interesting  
18       problem because a lot of organizations aren't  
19       really evil and they're really not trying to dupe  
20       the consumer. It's not that at all, but they're  
21       not actually digging deep enough into their own  
22       business models or into their own organizations to  
23       determine where they have vulnerability and risk.

24                  And in many cases, in most cases  
25       unfortunately, the legacy of being an auditor,

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1       right, you basically stumble on some incredible  
2       problems. Bad news doesn't necessarily get up to  
3       the right people. That's the job of an auditor is  
4       to communicate it ultimately to the board, and I've  
5       been in many board meetings to say to major  
6       companies, " You know what, what you say you do on  
7       privacy, you're just not doing, and it's going to  
8       be very costly to fix it."

9                   So then that's the other issue. What's the  
10       accountability on the other side to actually now  
11       fix the problem now that you have that information.

12                   Audits are a good thing though. If there's  
13       self regulation you might be able to move the bar.

14                   MR. LE MAITRE: I think there's some  
15       direction on it. The notice and choice aspects of  
16       Fair Information Practices are well understood. My  
17       own feelings are that it may take some sort of  
18       binding between notice and choice.

19                   This is the notice you gave me, this is the  
20       choice I gave back to you, and some notion that  
21       that forms a bond, a contract, that has some legal  
22       status that we can both rely upon in an audit  
23       situation.

24                   MR. PONEMON: Can I just make one comment  
25       about that? If you just look at the current

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1 implementations around GLBA, Gramm Leach Bliley,  
2 we've seen a lot of organizations having a very  
3 difficult time just operationalizing choice. We're  
4 starting to see evidence that companies are  
5 failing.

6 They're getting the reply back, but  
7 companies are having a difficult time making sure  
8 that it sticks in their legacy systems, and they're  
9 spending virtually no resources to fix the problem,  
10 so I think we're going to have a lot of interesting  
11 issues on the horizon in terms of lawsuits,  
12 organizational culpability, but that's a problem.

13 And so even if you have a contract, even if  
14 it's a legally binding contract, I'm not sure  
15 that's going to change behavior in the short term.

16 MS. ROSENFELD: John?

17 MR. KAMP: I just wanted to mention, and  
18 not in any way to slight the FTC enforcement  
19 authority or even the authority of auditors, that  
20 perhaps the most important thing that will happen  
21 in the marketing space is happening, and that is  
22 privacy is becoming part of the brand, and as part  
23 of the brand, it's part of that image of the  
24 product and the company that is part of the  
25 relationship that the customer has with the brand,

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1 and either a company is going -- going forward, I  
2 think either companies are going to respect the  
3 privacy of their consumers and treat them  
4 appropriately or they're not, and that consumers  
5 are going to take it out on them, and that the  
6 value of the brand and the need to ensure that the  
7 brand stands for something in the privacy space as  
8 well as in the basic historical places where it  
9 talks about quality, product quality and  
10 consistency and value proposition, that privacy is  
11 going to stand along that, and the American  
12 consumers are going to make sure that their privacy  
13 is protected in ways that they consider  
14 appropriate.

15 MS. ROSENFELD: You in the back.

16 MR. KAMINSKI: Hi. My name is Jim Kaminski  
17 from Arent Fox. This is a question for Ms.  
18 Richards. I was wondering if you had a sense -- I  
19 have two questions actually. My first question is:  
20 Do you have a sense of what the industry practice  
21 is for disclosing the company's enhancement  
22 practices, and also when that new standard is in  
23 place, are you going to require the companies to  
24 provide access on the Web site to the data  
25 collected offline to keep that parallel?

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1 MS. RICHARDS: The lovely question access.

2 This is always difficult to answer. Let me maybe  
3 revise a little of how I answered Dana's question.

4 Right now there isn't an explicit  
5 requirement for you to disclose, but if we go  
6 through your privacy practices and we find that  
7 it's very appropriate and you should be disclosing  
8 it, we will force you to disclose that information.

9 So it's sort of an implicit requirement if  
10 you could have that, and so -- and what we have  
11 been working with our account managers is to make  
12 sure that they know this is an important aspect and  
13 they need to be probing more about the questions,  
14 and so I think on that aspect it's something that  
15 we're -- as the practice becomes more prevalent,  
16 we're seeing more disclosures.

17 When I asked the question around the office  
18 of if they can give me some different examples, we  
19 came out with some different ones, and it was a  
20 really good learning experience for everybody to  
21 see what is happening.

22 I would say that there's -- I can't give  
23 you any numbers in terms of how prevalent it is or  
24 how not prevalent it is in terms of how many  
25 companies are doing it at this point. It's just a

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1       sense that it's definitely increasing and that it's  
2       something we're addressing as we go along.

3               I don't have a good answer for your access  
4       question at this point.

5               MS. ROSENFELD:   There in the middle.

6               MR. TUROW:   Joe Turow from the University  
7       of Pennsylvania.  I just wanted to know if anyone  
8       has a sense of whether what you guys have been  
9       talking about is going to change when things go in  
10      the not too terribly distant future to a much more  
11      broadband, very dynamic environment where people  
12      will be watching television, doing the Web stuff,  
13      doing this, constantly moving between sites at such  
14      a rapid speed with so many parties involved in a  
15      transaction that the kind of privacy policy issues,  
16      I'm just wanting to know, might be totally  
17      irrelevant, the ones that we've been talking about.

18               If you have four or five parties that have  
19       an interest in dealing with the data at the same  
20       time who have very different notions of what's  
21       acceptable, is that a scenario that's realistic,  
22       and then what do you do?

23               MS. ROSENFELD:   Would anyone like to take a  
24       shot at that?  Ari.

25               MR. SCHWARTZ:   Well, I was just about to

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1 say that's why XML technology, people are focusing  
2 on XML technology, because it's really the only  
3 realistic way the different parties can come in at  
4 different points, and that's why I focus so much of  
5 my time on P3P because I see it as the only  
6 realistic way to provide notice in that realm.

7 Now, obviously Larry brought up the point  
8 that P3P has a weakness that it doesn't do  
9 enforcement. P3P, that's not what P3P was meant to  
10 do. It's not supposed to do enforcement. It's  
11 supposed to do notice and do it well, and that's  
12 what we've tried to focus on.

13 So of course tying in all these access  
14 points is going to make it very difficult for the  
15 consumers to follow, it's difficult enough to  
16 follow on the Web the way they do it today. In a  
17 pervasive computing environment only XML  
18 technologies will help do that so we need to map  
19 everything to some --

20 MR. TUROW: Can you explain how? I don't  
21 see how it's helping to solve the problem.

22 MR. SCHWARTZ: How will XML help to solve  
23 it?

24 MR. TUROW: Yes.

25 MR. SCHWARTZ: Well, what's going to happen

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1 is that you'll have -- it's a complex system, and  
2 there's a few different ways that schemas will  
3 work, but basically that everyone will be relating  
4 to the same basic vocabulary or schema, and then  
5 information will be flowing into points back and  
6 forth using this same underlying data, using the  
7 same tags.

8 So that we don't have the confusion that we  
9 have today where everyone has different databases  
10 labeled in different ways and uses the information  
11 in different ways. It's a whole new infrastructure  
12 that Tim Berners-Lee from the World Wide Web  
13 Consortium calls the semantic Web.

14 MS. ROSENFELD: Jason?

15 DR. CATLETT: I have a quick question for  
16 Larry. Does the Personalization Consortium require  
17 its members to provide access to consumers about  
18 the data they hold, and does it require an  
19 opportunity to delete the information?

20 MR. PONEMON: That was probably again one  
21 of the most contentious issues with our principles,  
22 but we ruled. We prevailed. Basically access and  
23 accuracy are actual principles, and that means that  
24 you have to provide access, reasonable access which  
25 means that -- I don't like that word reasonable

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1 because it opens up for interpretation.

2 We're going to have to be really smart as  
3 auditors in terms of finding what's the line  
4 between reasonable and unreasonable, but more  
5 importantly, if someone finds a problem, you have  
6 to be able to provide that individual the proper  
7 approach for fixing those problems as well as  
8 redress if that is not being handled well.

9 But also this is opening up a can of worms  
10 in terms of security and authentication issues that  
11 have to be built into the system. From that point  
12 of view it could be very costly to members, but  
13 that's just what we have to do.

14 DR. CATLETT: But it was a requirement that  
15 was accepted by the 67 companies.

16 MR. PONEMON: All but one company agreed to  
17 it, and that one company basically has agreed to go  
18 along with it so it was amazing, but it was a  
19 battle. It wasn't like, Gee, it makes a lot of  
20 sense. It had to be -- it took weeks and months,  
21 as Win knows, a lot of work to kind of get us to  
22 that point.

23 MS. ROSENFIELD: Any other questions? No.

24 I want to -- was there anybody else? No?

25 I want to thank the panelists. This was an

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1 excellent panel, and it's not over yet. I want to,  
2 first of all, commend all of you for staying  
3 throughout the day. I apologize for our air  
4 control problems, but after this panel can step  
5 down, we have some closing remarks by Joel Winston.

6 (Applause.)

7                   MR. WINSTON: I think it's fitting that we  
8                   were able to get these curtains and windows open,  
9                   because the purpose of this workshop was to shed  
10                  some light and bring in some fresh air on a very  
11                  important subject, data merger and exchange, and I  
12                  hope we were able to accomplish that today.

13 I did notice that it took a crow bar to get  
14 some of those windows open, and I don't want to  
15 carry the metaphor too far, but actually I think  
16 people were very open and honest with us, and we  
17 really appreciate that.

18 I want to thank all of our panelists today  
19 and our audience for a very lively and interesting  
20 day. I also want to express my appreciation to the  
21 FTC staff who really worked tirelessly to put this  
22 workshop on and to do so really in record time.

23                    Specifically I want to thank Martha  
24                    Landesberg, Allison Brown, Jessica Rich, and Ellen  
25                    Finn from the Financial Practices Division, Lou

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1 Silversin from the Bureau of Economics, and Dana  
2 Rosenfeld from the Bureau Directors Office, and of  
3 course our intrepid team of support staffers who  
4 really made this possible today.

5 Let me just close with a few brief remarks.  
6 The Commission's been studying online data  
7 collection for over five years now, and we've  
8 hosted several workshops on a variety of topics  
9 related to collection issues, but I think the  
10 subject matter of this workshop is an especially  
11 timely one. It seems like every day we hear or  
12 read about new ways in which consumer data are  
13 being collected and combined and put together for  
14 various purposes.

15 It's been a very educational day for us and  
16 we hope for all of you. Although some of the  
17 practices we've heard about today are practices  
18 that have been going on for many decades, new  
19 technologies and other recent developments have  
20 increased the speed and amount of data that  
21 businesses exchange both online and offline, so  
22 being able to discuss these practices really helps  
23 us keep up with all of these recent developments.

24 We learned today, for example, about  
25 various sources of consumer data used for creating

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1 profiles such as public records, census data,  
2 survey data, warranty cards and consumer  
3 transactions.

4 In addition, many companies described their  
5 business models and how the merger and exchange of  
6 data benefits both the businesses and consumers.

7 For example, by purchasing third-party data,  
8 companies are able to target their advertising more  
9 effectively and efficiently and to personalize Web  
10 content, so that consumers may get more advertising  
11 that they want to see and fewer advertising offers  
12 that they don't want to see.

13 Several panelists raised questions about  
14 the transparency of these practices to consumers,  
15 in particular, whether consumers know about the  
16 existence of data compilers and the practice of  
17 enhancing consumer information with data from  
18 third-party sources. Do consumers know how and why  
19 this data is exchanged between companies?

20 Well, I would harken back to what  
21 Commissioner Swindle said this morning and many of  
22 the panelists raised throughout the day, this  
23 notion of the trust gap and the information gap,  
24 the misunderstanding gap.

25 From what I heard today it seems like the

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1 key problem here is that there's a gap between what  
2 businesses are actually doing in their collection,  
3 merger and exchange of data versus what consumers  
4 think they're doing.

5 I haven't seen any specific survey  
6 evidence, and I would certainly welcome it, but I'm  
7 willing to bet that most people either dramatically  
8 underestimate or dramatically overestimate the  
9 scope and detail of information that businesses are  
10 compiling about them.

11 On the one hand, I suspect that there are  
12 lots of consumers who really have no idea that  
13 hospitals and government offices and bankruptcy  
14 trustees and lots of other people are selling or  
15 providing personal information to businesses, all  
16 of which may be combined and enhanced in various  
17 ways to form consumer profiles.

18 On the other hand, I imagine there are lots  
19 of consumers who think that their every action is  
20 being traced, recorded, combined and deposited into  
21 some mega database for anyone to use and see. What  
22 I heard today is that the information that's  
23 actually being compiled and combined out there is  
24 not nearly that comprehensive or nearly that  
25 granular.

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1                   To me this raises a real challenge. Alan  
2 Westin did a survey several months ago on consumer  
3 attitudes toward privacy. He found that there are  
4 a fair number of people who simply don't want their  
5 information shared or used by anyone for any  
6 reason.

7                   On the other side of the equation, he found  
8 that there were some people who really didn't care  
9 about their information. They were happy to allow  
10 it to be used for any purpose whatsoever. But,  
11 what he also found is that there are about  
12 two-thirds of the survey participants who fit into  
13 the category of what he called privacy pragmatists;  
14 that is, people who are willing to share their  
15 information under certain circumstances for certain  
16 reasons and if they're promised certain benefits.

17                  Now, the task for business is to convince  
18 these pragmatists that in particular situations,  
19 it's to their benefit for the businesses to combine  
20 and use the information that they're putting  
21 together about them.

22                  My hope is that through workshops like  
23 this, we can help bridge the information and trust  
24 gaps and enhance public and business awareness of  
25 what is and what is not going on out there.

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1                   I'm not going to get into the debate about  
2                   the value of privacy policies, but I think we can  
3                   all agree that shedding more light and fresh air on  
4                   this subject has to be a good thing.

5                   Again, I just want to thank all the  
6                   panelists for contributing to this workshop and to  
7                   remind you that we do have a record that will  
8                   remain open for 30 days, and I encourage you to  
9                   file comments.

10                  Thank you very much for coming.

11                  (Timed noted: 4:51 p.m.)

12                  -        -        -        -        -

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(301) 870-8025

1 C E R T I F I C A T I O N O F R E P O R T E R

2

3 CASE TITLE: MERGING AND EXCHANGING CONSUMER DATA

4 WORKSHOP

5 MATTER NO.: P014803

6 HEARING DATE: MARCH 13, 2001

7

8 We HEREBY CERTIFY that the transcript  
9 contained herein is a full and accurate transcript  
10 of the notes taken by us at the hearing on the  
11 above cause before the FEDERAL TRADE COMMISSION to  
12 the best of our knowledge and belief.

13

14 DATED: MARCH 26, 2001

15

16 SALLY J. BOWLING

17

18 DEBRA L. MAHEUX

19

20 C E R T I F I C A T I O N O F P R O O F R E A D E

21 I HEREBY CERTIFY that I proofread the  
22 transcript for accuracy in spelling, hyphenation,  
23 punctuation and format.

24

25 DIANE QUADE

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